

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

445

Nos. 23,209 & 23,321

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,209

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND
MACHINE WORKERS, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 23,321

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

THIDEE PRODUCTS, INC.,

Respondent.

United States Court of Appeals *Petition To Review and Application To Enforce*
for the District of Columbia Circuit an Order of the National Labor Relations Board

FILED MAY 22 1970

APPENDIX

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TIIDEE PRODUCTS, INC.

and

INTERNATIONAL UNION OF ELECTRICAL,
RADIO AND MACHINE WORKERS, AFL-CIO

Cases 9-CA-4618
9-CA-4639-2
9-CA-4710

TRIAL EXAMINER'S DECISION

Statement of the Case

WILLIAM W. KAPPELL, Trial Examiner: Cases 9-CA-4618, 9-CA-4639-2, and 9-CA-4710, proceedings under Section 10(b) of the National Labor Relations Act, as amended, herein called the Act, were heard in Dayton, Ohio, on September 18 and 19, 1968,¹ with all parties participating pursuant to due notice.

The complaint² in Case 9-CA-4618 alleges that Tiidee Products, Inc., hereafter referred to as Respondent, during the latter part of January instituted plant rules threatening discharge of employees for talking about the Union during "company time" or for distributing literature on "company property," thereby unlawfully limiting union soliciting of employees in violation of Section 8(a)(1) of the Act; and unilaterally changed the terms and conditions of employment by publishing and instituting new rules of employment in a unit of employees for which the Union is the exclusive bargaining representative, in violation of Section 8(a)(5) of the Act.

¹All dates hereafter refer to the year 1968 unless otherwise noted.

²Based on charges filed on February 7 and March 7 and 28, respectively, by International Union of Electrical, Radio and Machine Workers, AFL-CIO, hereafter referred to as the Union.

[2] The complaint³ in Case 9-CA-4639-2 alleges that Respondent constructively discharged employee John Haywood and refused to reinstate him in violation of Section 8(a)(1), (3), and (4) of the Act because of his union support and his adverse testimony to Respondent's interests in a prior Board hearing.

The complaint⁴ in Case 9-CA-4710 alleges that in violation of Section 8(a)(1) of the Act, Respondent interfered with, restrained, and coerced employees by admonishing them not to associate with union Sympathizers and stating that union adherents were troublemakers, unliked by Respondent, that they would soon find out to whom to talk, and that involvement with union activity would be harmful; that in violation of Section 8(a)(3) and (1) of the Act, employees David Lefler and Pauline Messer were discriminatorily discharged because of their union support; that employee Claudine Tackett was discriminatorily discharged because of her union support and adverse testimony in a prior Board hearing in violation of Section 8(a)(3), (4), and (1) of the Act; that employee Phyllis Wilson was constructively discharged or, in the alternative, discharged because of her union support and adverse testimony in a prior Board hearing in violation of Section 8(a)(3), (4), and (1) of the Act; and that the terms and conditions of employment were changed by unilaterally instituting new work rules and issuing written warnings to employees for alleged infractions of said rules, unilaterally adopting a 90-day probationary period for new employees, and not permitting an employee to be represented by a union agent to a grievance concerning a condition of employment, in violation

³Based on charges filed on April 26 and May 27, respectively, by the Union.

⁴Based on charges filed by the Union on April 26 and May 17, respectively.

of Section 8(a)(3), (5), and (1) of the Act. Respondent duly filed an answer to each complaint denying the commission of any of the alleged violations. By order of July 19, the Regional Director for Region 9 of the National Labor Relations Board, hereafter referred to as the Board, consolidated the aforescribed cases for purpose of hearing.

All parties were afforded full opportunity to be heard, to introduce relevant evidence, to present oral argument, and to file briefs. General Counsel, the Charging Union, and Respondent filed briefs which have been duly considered. On the entire record in the cases, and from my observation of the witnesses, I make the following:

Findings of Fact

I. Commerce

Respondent, an Ohio corporation engaged in the manufacture of metal products at its plant in Dayton, Ohio, had a direct outflow during the past 12 months in interstate commerce of goods and products valued in excess of \$50,000, which it sold and shipped from its Dayton plant directly to plants outside of Ohio. Respondent admits, and I find, that at all times material herein Respondent has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organization Involved

Respondent admits, and I find, that at all times material herein the Union has been a labor organization within the meaning of Section 2(5) of the Act.

[3]

III. The Unfair Labor Practices

A. *The Prior Board Proceedings*

Pursuant to several charges⁵ filed against Respondent by the Union during September, October, and November 1967, alleging violations of Section 8(a)(1), (3), and (5) of the Act, a hearing was held before a Trial Examiner of the Board during January 1968. On August 27, the Trial Examiner issued a decision in which he found, *inter alia*, that Respondent (1) violated Section 8(a)(5) for its refusal to recognize and bargain with the Union as the exclusive bargaining representative of an appropriate unit of Respondent's production and maintenance employees pursuant to a certification⁶ issued by the Regional Director for Region 9 on November 8, 1967, following a Board-conducted representation election on September 14, 1967; (2) violated Section 8(a)(1) by interfering with, coercing, and restraining its employees in a widespread manner in the exercise of rights guaranteed in Section 7 of the Act; and (3) violated Section 8(a)(3) by arbitrarily raising production quotas of employees and discriminatorily laying off and discharging employees in retaliation for their support of the Union. The Trial Examiner's findings, conclusions, and Recommended Order providing appropriate relief were adopted by the Board on February 24, 1969,⁷ with slight modification not pertinent herein.

⁵Cases 9-CA-440, 9-CA-4488, 9-CA-4536, and 9-CA-4563.

⁶Challenged by Respondent but upheld by the Trial Examiner.

⁷174 NLRB No. 103.

B. *The Alleged 8(a)(1) Violations*

1. The posted rules

It was stipulated that in January following the prior Board hearing (January 16-18), Respondent posted a set of work rules and regulations containing, *inter alia*, the following:

5. Soliciting or collecting contributions for any purpose whatsoever, on company premises, without the approval of the management.
9. Distribution of literature, written or printed matter of any description on company property, not incidental to company business.

The rules and regulations state further that an employee committing minor offenses shall be warned, that two such infractions shall constitute a major offense subjecting an employee to a 3-day layoff, and that two major infractions constitute an intolerable offense for which an employee is subject to dismissal.

Irvin Hollander, Respondent's president, testified that posted rules had been in effect since 1945, that due to a fire 2 years ago the posting was destroyed and he had neglected to replace it, and that they were re-posted following the prior Board hearing because the employees began to neglect their work. He testified further that prior to the fire only part of the rules were posted on a small 3 by 5 card. The current posting contains 34 rules and regulations in addition to other typed matter and is 8 by 11 inches in size. No evidence, however was presented to show which, if any, of the rules were allegedly previously posted.

[4]

Conclusions

Regardless of prior postings of the rules, the nonsolicitation rule is invalid and in violation of Section 8(a)(1) of the Act. The rule applies to

employees on their own time as well as to working time.⁸ Moreover, it was posted not long after the Union won a representation election, and closely following the Board hearing at which several of Respondent's employees testified adversely to its interest. It appears, and I find, that Respondent was motivated to post the rules in retaliation against employees for their union support.⁹ See *Marlene Industries Corp.*, 166 NLRB No. 58; and *Wm. H. Block Company*, 150 NLRB 341.

The nondistribution rule is presumptively violative of Section 8(a)(1) unless rebutted by evidence of special circumstances demonstrating its need based upon safety factors, interference with plant production or plant discipline. No such showing was established herein.¹⁰ I, therefore, find that the nondistribution rule was also violative of Section 8(a)(1).¹¹ The threat to impose disciplinary measures for infractions of the posted prescriptions served to aggravate the interference with the rights and the coercion of the employees.

2. The alleged threats to, and unlawful interrogation of, Wells

About 3 weeks after the prior Board hearing, Hollander, in a conversation with employee Bill Wells at his work station concerning his salary

⁸Any ambiguity in the scope of these rules is held against the promulgator rather than against the employees. *N.L.R.B. v. Miller Charles & Co.*, 341 F.2d 870, 874 (C.A. 2), enfg. 148 NLRB 1579; *Campbell Soup Company*, 159 NLRB 704, enfd. 380 F.2d 372 (C.A. 5).

⁹In the prior cases, Respondent was also found to have unlawfully retaliated against employees for their union support.

¹⁰See *Republic Aviation Corporation v. N.L.R.B.*, 324 U.S. 793, 797-798.

¹¹The posting without consultation or negotiation with the Union is discussed, *infra*, as a violation of Section 8(a)(5).

and the type of work he is qualified to perform, stated "... because when you cut my throat you're cutting your own throat." About a week after the foregoing conversation, Hollander summoned Wells to his office and accused him of having made inconsistent statements in his testimony at the prior Board hearing, and also interrogated him as to what he had discussed with the General Counsel and union counsel during that hearing.

On April 10, Wells was given a warning notice¹² pursuant to the posted rules because he allegedly failed to watch the work of a new employee, as directed, with the result that she turned out defective parts. Wells, however, testified that her work was satisfactorily performed while he was in a position to observe it but that inasmuch as he also had to attend to the operation [5] of his own machine he was unable to check on all her work. His testimony was not refuted, nor was any evidence presented to indicate either in what manner or to what extent the new employee turned out defective work.¹³

Conclusions

The General Counsel asserts that Hollander's "throat cutting" remark constituted a threat directed against Wells for his union activities, and that his interrogation of Wells interfered with his statutory rights in violation of Section 8(a)(1). I find that, although the "throat cutting" remark of Hollander raises a suspicion that it was related to Wells' union activity, the evidence reflects no reference to unionism or union activities during

¹²The notice had notations of defective work and carelessness, and failure to perform work, as directed.

¹³The effect of the warning notice as a violation of the Act is discussed, *infra*.

this conversation, and appears only to concern Wells' gripe that he was relegated to low-paying relatively unskilled jobs despite his ability to perform higher remunerative work. I conclude that the General Counsel has failed to establish by the preponderance of the evidence that this incident constituted a threat to Wells to abstain from union activity in violation of Section 8(a)(1) of the Act. I find, however, that Hollander's interrogation of Wells concerning his conversation with the General Counsel and union counsel during the prior Board hearing constituted unlawful interrogation. Such interrogation can be reasonably equated with that regarding the contents of affidavits given to Board agents by employees, which under well-settled Board law has been found violative of Section 8(a)(1) of the Act.

3. The alleged coercion of Pauline Messer and David Leffler

The uncontradicted evidence shows that on March 27, Hollander hired Pauline Messer as a 90-day probationary employee and, at that time, told her "... we have quite a few troublemakers here, and we do not like troublemakers," and that she should learn to whom she should talk and to whom not to talk. Messer admittedly did not comprehend the significance of these remarks at the time. It also appears that similar remarks were addressed to Messer by Supervisor Mary Burgher and Hazel Ward.¹⁴ However, Messer testified that neither Ward nor Burgher ever mentioned the Union to her in these conversations. Nor is there any evidence that Hollander referred to the Union in his comments to her when hired or at any other time.

¹⁴A procompany employee who testified on behalf of Respondent in the prior Board hearing as well as in the instant cases.

On April 12, Hollander, in a conversation with David Leffler who began working for Respondent about the middle of March, inquired whether he was becoming intimate with some of the employees, mentioning specifically the names of Messer and Phyllis Wilson. Leffler replied that he had not but stated that he had a date with Messer for that evening. Hollander then told him to be careful with whom he associated or talked to because he could get into big trouble. The next morning, Saturday, a nonwork-day, Leffler was summoned to the plant by Hollander who questioned him about his date of the preceding evening and then asked whether he realized what was meant by his remark of the preceding evening in connection with associating with the wrong people. When Leffler replied that he thought he meant "union [6] sympathizers," Hollander denied it and stated he was referring to improper social relations between the women and men employees, which could subject the men to blackmail.¹⁵

Conclusions

The General Counsel contends that through knowledge subsequently acquired by Messer while working on the job, she learned that the term "troublemaker" was synonymous with the term "union adherent," and that, therefore, Hollander's comment to her when hired was coercive in violation of Section 8(a)(1) of the Act.

Section 8(a)(1) of the Act provides that it shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Section 7. It is well settled that the test of interference, restraint, and coercion is whether the conduct in-

¹⁵A few of the women employees, including Messer, were either separated from their husbands or divorced. Leffler was also either separated from his wife or divorced.

volved may reasonably be said to tend in those directions. *Kroger and Company v. N.L.R.B.*, 401 F.2d 682, 686 (C.A. 6). I find that the record fails to establish by the preponderance of the evidence that Messer, during the course of her employment, eventually comprehended the significance of Hollander's remark to mean that she was not to associate with union adherents. I accordingly conclude that Hollander's alleged admonition to Messer did not tend, insofar as she was concerned, to interfere with her statutory rights in violation of Section 8(a)(1).

The General Counsel contends that Hollander's remarks to Leffler were also directed against his association with union adherents, and, therefore, coercively similar to his remarks to Messer. It appears, and I find, that Leffler, in contrast to Messer's possible lack of sophistication, believed that Hollander was referring to union adherents. I am not persuaded by Hollander's belated explanation to Leffler that he was not referring to union adherents, and his expressed concern for the morals of his employees in their personal relations away from the plant. In these circumstances I find that Hollander's statements to Leffler may reasonably be found to have tended to interfere with or coerce him within the meaning of Section 8(a)(1) of the Act.

C. The Alleged Violations of Section 8(a)(3) and (4)

1. The discriminatory discharges

a. *John Haywood*

Haywood, an ex-convict under the supervision of Parole Officer John Weiher, began working for Respondent on March 15, 1967. In June of that year, Hollander in a conversation with Weiher praised Haywood as a good worker. During November of that year Weiher received a call from

Hollander complaining about his work. On November 20, Weiher visited Haywood at his home and informed him that he had received a telephone call from Hollander to the effect that [7] he had become too involved in union problems.¹⁶ On March 7, Weiher received another call from Hollander complaining about Haywood's conduct at the plant in using foul language which would not be tolerated because of the women employed there.¹⁷ That night Weiher visited Haywood at his home and advised him that Hollander wanted him to quit because his work was poor and he had lied about Hollander at the prior Board hearing. Weiher urged him to quit but Haywood was reluctant to do so because he lacked 1 week's work to qualify for a week's vacation with pay. He, however, agreed to follow Weiher's advice if he were permitted to work 1 more week to qualify for the paid vacation. Weiher stated that he would take it up with Hollander the next day. The following afternoon Weiher called Hollander and after discussing Haywood's proposal, Haywood was called to the telephone and told by Weiher that Hollander was willing to give him the week's vacation pay if he quit then and there. Weiher also advised him that otherwise he was "afraid Mr. Hollander would write to Columbus [Ohio] and might cause you a lot of trouble later." Haywood then related to Hollander that Weiher advised him to quit to which Hollander replied, "Well, he's your boss; you ought to do what he says." Haywood agreed to leave, and

¹⁶In the preceding Board cases it was found that during the union campaign Hollander used Haywood to ferret out information about union adherents, but that Haywood later refused to sign a company-sponsored petition circulated among the employees to indicate whether or not they were in favor of the Union.

¹⁷Haywood testified without contradiction that he had never been warned about using foul language in the plant.

upon receiving his paycheck from Hollander was told "you can call it a vacation check or a separation check."¹⁸

Adam Campbell, an employee, testified that at the end of November 1967, he had a long conversation with Haywood about the latter's immoral exploits with women, and that on January 8, he had another conversation lasting 3 to 4 hours during which Haywood neglected to remove certain castings from his machine, causing them to get scratched. Campbell also testified that he complained to Hollander that Haywood's long conversations with him interfered with his work. Haywood denied engaging in such conversations.

Conclusions

General Counsel contends that Haywood was constructively discharged in violation of Section 8(a)(3) and (4) of the Act. Respondent asserts that Haywood resigned on the advice of his parole officer. It appears that Haywood had testified¹⁹ on behalf of the General Counsel in the prior Board hearing, and had been unlawfully laid off in December 1967 in retaliation for his support of the Union.²⁰ Hollander continued to show his opposition to and [8] displeasure with union adherents when he complained to Weiher that Haywood was becoming too involved in union problems.

¹⁸The above findings are based upon the credited composite testimony of Haywood and Weiher. Although Hollander testified he made no reference to the matter.

¹⁹It was stipulated that the alleged discriminators herein, who testified at the prior Board hearing did so adversely to Respondent.

²⁰It was also found in the prior cases that when Haywood called for his check following that layoff, Hollander asked how he had voted in the election. After Haywood answered that he voted for the Union, Hollander stated that he knew it but was merely checking to ascertain what he would say.

Realizing the vulnerability of Haywood's position because he was on probation, Weiher advised him to quit otherwise Hollander could do him great harm by complaining to the (parole) authorities in Columbus (Ohio). Under these circumstances, Haywood was pressured into resigning because he had no alternative but to follow his parole officer's advice. I find that Hollander was motivated in applying this pressure by reason of his opposition to the Union and desire to retaliate against union adherents. I find further that the complaints against Haywood grounded on his profanity at the plant and his failure to diligently apply himself to his regular work tasks were pretextual and intended to mask Respondent's union animus. I conclude that Haywood's quit was induced by Respondent's discriminatory action against him and he was therefore constructively discharged in violation of Section 8(a)(3) and (4) of the Act.

b. *David Leffler*

Leffler began working for Respondent in March, operating a sander and finishing mill. According to Hollander's son, Joseph, he had taught Leffler how to operate his finishing machine, and had instructed him not to load it with castings for polishing if he were going to quit for the day before the polishing was completed, and instead to work on sand jacks until quitting time. Otherwise, a lubricating detergent would not be added to the machine every 15 minutes, as required, and the castings would get scratched.

As related and found above Hollander asked Leffler, on April 12, whether he was getting friendly with the employees, mentioning, in particular, Pauline Messer and Phyllis Wilson,²¹ which could get him in trouble,

²¹ An avowed union adherent who had testified against Respondent at the prior hearing.

and that he should be careful with whom he spoke, to which Leffler replied that he was having a date that evening with Pauline Messer. In that conversation Hollander also complimented him on his work and said he expected him to work there for a long time.

Joseph Hollander testified that on the night of April 12, after Leffler had left the plant, he found his machine running, loaded with castings which had been damaged, and that he had advised his father that night of the incident.²² The following morning (Saturday, a nonworking day) Leffler was summoned to the plant from his home. After questioning him about his date with Messer and referring to his conversation of the preceding day, as related above, Hollander told him that his work was not efficient, that on the preceding night at quitting time he had left castings in his machine, causing them to be scratched, and that he would have to let him go. Leffler claimed that he had been advised previously by Hollander that he could leave the castings in the finishing mill when he quit for the day, and that Adam Campbell, who was working overtime, would remove the castings when finished, which took from 20 to 30 minutes. Hollander did not refute this claim, nor was there any denial of Leffler's assertion that this procedure had been previously recommended by Hollander, his son Larry, and Adam Campbell. Haywood also testified without contradiction that he not only never received such [9] instructions as were allegedly given by Joseph Hollander to Leffler, but asserted that he was told to reload the polishing machine even when the castings would not be completed before his quitting time for the day because in that event the machine would be unloaded by one of the night men or Hollander.

²²He also testified that he had informed his father 2 weeks earlier that Leffler could not take instructions and was not working out.

Conclusions

Hollander's expressed concern and preoccupation as the guardian of the morals of his employees appears suspiciously pretextual as an attempt to immunize his new employees from contact with older employees who were known union adherents. His interrogation of Leffler on Saturday morning regarding his date with Messer, and his belated explanation that he was referring to immoral women employees rather than to union sympathizers, as understood by Leffler, was an attempt to dissipate any claim of antiunion motivation in preparation for Leffler's discharge immediately thereafter. Nor was there any reason or need to refer to the morality of the employees, if Leffler was being discharged because of his inability to perform his job properly. Furthermore, I find the evidence far from persuasive to establish that Leffler was disregarding instructions in the operation of the milling machine, which was asserted as the motivating cause for his discharge. Oddly enough, no evidence was presented to show the extent of the damage to the scratched castings, which would indicate the gravity of the single alleged incident as warranting such drastic action as a discharge, especially in view of the fact that on the preceding day Hollander had complimented his work. Considering all the evidence in the context of Respondent's antiunion propensity as found in the prior cases, I conclude that Leffler's discharge was, at least in part, motivated by Respondent's desire to discourage unionism in the plant in violation of Section 8(a)(3) and (1) of the Act.

C. *Pauline Messer*

Messer was hired by Hollander on March 27 as a 90-day probationary employee to work on the moulding machine. As related above, Hollander told her at that time that they had quite a few troublemakers and that she

should learn with whom to associate. During her first week Hollander informed her that he had received a favorable report about her ability to learn and work from Hazel Ward who was breaking her in. During lunch-time on April 1, as she passed by the table occupied by Supervisor Mary Burgher, she was invited to sit down with her. Messer declined stating that she was going to sit with Phyllis Wilson, an active prounion employee. Shortly after lunch Hazel Ward, accompanied by Burgher, approached Messer at her machine and cautioned her about with whom she should associate. On April 15, Messer signed a union authorization card at the request of employee Claudine Tackett. On April 17, Ward came to Messer's machine and observed her work all day long, which had not occurred previously. The next day (Thursday) Union Attorney Janetzke telephoned Hollander about mid-morning and informed him that Messer had signed a union card. Later that afternoon Hollander approached Messer, handed her a paycheck, and stated that he had been watching her and her attitude towards her work and did not think she was going to make it. Messer pointed out without avail that she had been hired as a 90-day probationary employee. Although her normal workweek was Monday through Friday, she was discharged on that Thursday and paid for 4 days.

Ward testified on behalf of Respondent that for the first week or two she trained Messer on her moulding machine and she caught on quickly and was a good worker. Thereafter, she began to take long coffeebreaks and to carry coffee to the men, as a result of which her production fell off because [10] she was not at her machine to unload and reload, when necessary. She reported this to Hollander, but said nothing to Messer. Messer denied taking long coffeebreaks, and stated, without contradiction, that she had never received any warning about her work. Based on

the demeanor of the witnesses and the sequence of events precipitating her discharge, Messer's testimony is credited.

Conclusions

The General Counsel submits that Messer was discriminatorily discharged because of her union support and to discourage unionism in the plant. Respondent contends that she was terminated because she failed to attend diligently to her machine causing her production to fall, and she had participated in the removal of a protective curtain hung between her machine and the one operated by Phyllis Wilson, which caused extensive damage to Wilson's machine.²³ I find it highly significant that there is no evidence indicating that Messer was ever reprimanded for her alleged shortcomings, that she was praised for her learning ability and work not long before she was fired, that within hours after Hollander was informed that she had joined the Union, she was discharged, and that there was no immediate precipitating incident which necessitated or warranted her discharge a day prior to the ending of her normal workweek. These considerations viewed in the light of Respondent's antinunionism confirm the conviction that her discharge was motivated by antiunionism and retaliation against a union adherent in violation of Section 8(a)(3) and (1) of the Act.

d. *Claudine Tackett*

Tackett began working for Respondent in January 1967. As found in the prior cases, she had been the chief union protagonist in the organiz-

²³The curtain was hung to deflect plastic particles emanating from Messer's machine from penetrating Wilson's machine. There is conflicting testimony as to whether the curtain had been partially opened or removed prior to Messer's hiring. However, I find for purposes of adjudicating her discharge that it is necessary to resolve whether or not she was involved in the alleged curtain incident.

ing campaign during 1967, had served as the Union's observer at the representation election, and had testified adversely to Respondent at the prior hearing.²⁴

On March 12, Tackett was recalled from layoff status by Hollander. Before she began working, Hollander warned her that he was tired of her bad work and she was not to cause any more trouble.²⁵ He also changed her work [11] procedures by restricting her to her work area, her boxes were to be brought to her and later removed to the shipping area, she was not to seal her boxes, Hollander was to inspect her work, and she no longer was to keep a record of her production, all of which she had personally done previously. And, whereas before she used to cut and wind five boxes of plastic water hoses and then place couplings on them, henceforth she would complete one box at a time.²⁶ On March 13, Hollander had her read the posted work rules and directed her to increase her production to 27 boxes a day, although previously she had produced 12 or 13 boxes a day and had not been pressured to augment her production.²⁷ During

²⁴The findings in those cases also show that Hollander visited Tackett at her home during August 1967 while she was convalescing from her foot injury and gave her \$50. At that time, apparently unbeknown to Hollander, she was acting as liaison between the Union and the employees. Immediately following the announcement of the election on September 14, Hollander turned to her and accused her of ungratefulness after all he had done for her. The morning following the election Tackett was the first employee laid off allegedly for lacking work. She was recalled on September 25 for approximately 1 week and again laid off ostensibly for lack of work. Her layoffs were found to have been discriminatorily motivated because of her union support.

²⁵No evidence was presented to justify these complaints.

²⁶These procedural changes, however, were not applied to other employees as appears from the testimony of employee Jewel Romaine.

²⁷Although Jewel Romaine testified on behalf of Respondent that she produced from 45 to 50 boxes a day, sometimes only 35, Tackett's testimony as to her production prior to her recall was not refuted.

that week, Hollander also reprimanded her for quitting at 4:25 p.m. instead of 4:30 p.m., despite the established practice of the employees to stop working at 4:25 p.m. to wash up before leaving.

On March 20, Tackett received a warning notice²⁸ from Hollander for allegedly placing three couplings instead of two on a 15-foot water hose which had been found on top of one of her unsealed boxes. Tackett stated that she could not tell whether it was her doing or that of other employees who worked on hoses before she began such work on that day.²⁹ On April 17, Tackett received a second warning notice for allegedly packing 10-foot hoses in a box marked for 15-foot hoses, and was given a 3-day suspension. Tackett disclaimed responsibility for the error, claiming that it happened between the time she left the plant for the day and before she reported on the following morning. About 2 weeks later, Hollander accused her of being short in her count of hoses in one of her boxes, which she denied.

During April she worked alternately on the winder and drill machines. About April 30, Hollander assigned her to learn and work on the elbow machine,³⁰ despite her protestations that she was fearful of working on

²⁸The notice listed defective work and carelessness as infractions of the work rules, and stated that another infraction of a minor rule would subject her to a 3-day layoff.

²⁹Employee Romaine testified that it was virtually impossible for an operator not to detect so flagrant a defect (an inspection of Respondent's Exhibit 1 confirms that impression), and Respondent's witness, Eleanor Kleismit, stated that it was the only such defect she had seen in 15 years.

³⁰This is a large machine which produces plastic elbows to fit on pipe in the plastic department. In its operation large pliers are used which require balancing on one foot and bracing the other foot against the machine. Although Respondent witnesses Connie McGoon, Barbara Tipton, and Mary Burgher testified that it was no harder to operate than other equipment, I find based on all the evidence that it was not only more cumbersome to operate but also required greater effort compared to a winder or drill.

that machine. The morning after Tackett began working on the elbow machine, a new girl was hired to operate the drill doing the work previously done by her. Tackett operated the elbow machine for a day and a half and then [12] asked Burgher to relieve her for an hour because her foot hurt.³¹ Burgher replied that she would have to consult Hollander. Not long after, Hollander appeared at the machine and told Tackett he would see about relieving her the following day because they had only 45 minutes left to quitting time. Tackett did not report for work the following day, but showed up on May 6, when she told Hollander she declined to work on the elbow machine because she was afraid he would not relieve her in the event she became sick, and she was also afraid of what he might do to the machine to mess up her work in order to fire her. Hollander replied that he had nothing else for her to do and told her to wait for him in the lunchroom. Shortly thereafter, he appeared in the lunchroom and advised her that he had no other work for her and would call her when it became available. At that time there was practically no 10- or 15-foot hoses in stock, and there were outstanding orders for these products.

Not hearing from Hollander, Tackett and her father appeared at the plant on May 16. Her father went into the office while she remained outside and he demanded her paycheck from the office girl. Hollander was summoned and ordered him out of the plant. He then asked Tackett, who appeared in the doorway, why she had not been in or called in and if she had quit. When she denied quitting, he asked her to wait a minute and

³¹She had sustained injuries to her foot the preceding August in an automobile accident, which incapacitated her for some time and of which Hollander was aware.

went into his office and reappeared with a notice³² which he gave her, and stated "Now, you are fired."³³

Conclusions

The evidence clearly establishes that beginning with March 12 when Tackett was recalled to work, Hollander resumed his harassment of her by warning her about her future conduct in the plant. It would also be reasonable to assume that Hollander was particularly incensed at her at that time because of his feeling that she had deceived him in supporting the Union and was regarded as ungrateful. He continued to harass her as is shown by his change of her work procedures, raising her production quota, taking her off the drill machine and hiring a new employee to operate that machine, assigning her to work on the elbow machine despite her protestations, and laying her off when she declined to work on the elbow machine, allegedly because there was no other work available despite a shortage of inventory.³⁴ It also appears that in the first two warning [13] notices issued to Tackett she was held responsible for alleged carelessness and defective work in circumstances where there was reasonable doubt as to her blame. Also, although Respondent claims that Tac-

³²The notice, dated May 5, was designated "3rd Notice" and stated "Violation # 6 Gross insubordination. Refused to operate a machine you were assigned to."

³³The above findings are based on the credited testimony of Marjorie Pratt, the office girl who witnessed the confrontation and testified on behalf of Respondent. Tackett's testimony of the incident differed in that she stated Hollander told her that she had quit and she denied it. According to Hollander, he asked Tackett where she had been, and when she replied that he had told her he would call her, he accused her of lying and gave her the discharge ticket because she refused to run the elbow machine. Tackett's testimony to the effect that she denied quitting is credited.

³⁴As appears above in the prior cases, Respondent was also found to have discriminatorily laid her off, allegedly for lack of work.

kett was discharged for her refusal to work on the elbow machine, it appears that she was only laid off at the time of her refusal. The discharge was a later development.

Based on the foregoing, I conclude that Hollander was motivated to discharge Tackett on May 16 because of his desire to retaliate against her for her union support in violation of Section 8(a)(3), (4), and (1) of the Act.

e. Phyllis Wilson

Wilson began working for Respondent on November 22, 1966. As found in the prior cases, she was discriminatorily laid off in September and October 1967, but had been recalled before the prior Board hearing at which she testified adversely to Respondent.³⁵ She had worked primarily on the assembly table before that hearing, and at no time had she operated the drill, the moulding machine, or the elbow machine. A few weeks after that hearing she was transferred to work on the elbow machine when Connie McGoon, who operated that machine, became ill. Upon McGoon's return to work she alternated with Wilson in operating the elbow machine, each working half a day for the next few weeks until McGoon hurt her finger. Wilson then ran the elbow machine all day for the following month. She then complained to Supervisor Burgher about why she was not being relieved by McGoon. Burgher replied that she did not know and that if she had any complaints to take them directly to Hollander.³⁶

³⁵A week after the election Hollander warned Wilson "to watch her step and her mouth."

³⁶By that time McGoon had recovered sufficiently from her finger injury to relieve Wilson during her 10-minute mid-morning and afternoon coffeebreaks.

Wilson decided that she would not continue working on the elbow machine unless she obtained relief and did not report for work on Monday, April 15. She called Mr. Janetzke, the union attorney, and explained her predicament to him. He suggested that she see Hollander about obtaining relief but she declined to go alone. He then asked whether she would see Hollander accompanied by Creola Reese, the union representative, to which she agreed. The following day she and Reese visited the plant where Reese explained to Hollander that she was there on behalf of Wilson's request for relief on the elbow machine. Hollander refused to discuss the matter and told her to see Harvey Rector, his representative, if it concerned any employee or union matter. Harsh words were then exchanged between them, and Reese, if not both of them, was ordered to leave the plant. Reese and Wilson then went to see Janetzke who called Rector and, after referring to and relating the Reese-Hollander incident, he discussed the failure to relieve Wilson on the elbow machine as was the practice with other female operators.³⁷ Rector replied that Wilson had indicated animus towards Hollander by [14] her testimony at the prior hearing. Janetzke admitted that there were hard feelings between them, and asked Rector to intercede on her behalf with Hollander in resolving the matter. Rector agreed to do so, and later that day he called Janetzke and informed him that he had spoken to Hollander who insisted that if Wilson wished to continue working, she would have to do so under the conditions assigned by him.

³⁷ Although some female employees testified on behalf of Respondent that they operated the elbow machine all day for extended periods, Burgher admitted that for quite some time there had been a practice for two girls to alternate working on the machine for half a day at a time.

On April 19, Wilson and her husband visited the plant to pick up her paycheck. There, they met Hollander who asked Wilson where she had been. She replied that she had received a telephone call from Janetzke to the effect that she had been fired. When Hollander remarked that he (Janetzke) knew more about it than he, Wilson stated that it made no difference because she quit on Monday.³⁸ Hollander also informed her that not calling in for 3 days constituted an automatic quit, and he also complained that she had belittled him in her testimony at the prior hearing.

Conclusions

The General Counsel contends that Wilson was constructively discharged on April 19. Respondent in its brief appears to take the position that she quit on April 15. It appears, and I find, that Wilson declined to report for work on Monday, April 15, because of her decision to no longer operate the elbow machine unless she was given appropriate relief. With that in mind and pursuant to Janetzke's suggestion, she and Reese, attempted unsuccessfully to discuss the matter with Hollander. Upon learning how Hollander rebuffed them, Janetzke requested Rector to intercede on Wilson's behalf with Hollander. After consulting Hollander, Rector advised Janetzke that Hollander insisted that his work assignments would have to be followed, which in effect, meant that no relief would be forthcoming for Wilson. At the subsequent meeting on April 19, Wilson or her husband plainly stated that she would not submit to any further harassment and would not operate the elbow machine without appropriate relief. I con-

³⁸These findings are based upon the credited composite testimony of Marjorie Pratt, Hollander, McGoon, and Burgher. Wilson testified that Hollander asked her twice whether she was coming back, and that either she or her husband replied that she was not going to tolerate any more harassment.

clude from the foregoing that Wilson declined to work on or after April 15 unless regularly relieved on the elbow machine. Inasmuch as no such relief was thereafter offered to her, I find that she quit on the last working day preceding April 15, presumably April 12. I find further that Hollander strongly resented her because of the testimony she gave in the prior hearing, which was personally degrading to him, and her union support, and he declined to follow in her case the usual and established policy of providing a half day relief on the elbow machine. Hollander was following his pattern of making it very difficult, if not intolerable, for union adherents to continue working in the plant. I conclude that Wilson's quit was induced by Hollander's discriminatory tactics and constituted a constructive discharge in violation of Section 8(a)(3), (4), and (1) of the Act.

2. The alleged discriminatory warning notices

It is contended that the warning notice given to Wells and Tackett constituted discriminatory action in violation of Section 8(a)(1) and (3) of the Act.

[15] As appears above, Wells and Tackett received warning notices for alleged infractions of the posted rules. The evidence reflects, and I find, that both employees raised reasonable doubts as to their responsibility for the acts complained of by Hollander. Moreover, I find it unnecessary to resolve their responsibility. The evidence viewed in its entirety establishes that Hollander, motivated by vindictiveness, followed a pattern of retaliation against employees who supported the Union and/or testified adversely to him in the prior Board hearing. He used the warning notices, apparently as a new device to indicate his displeasure with union adherents and opposition to the Union. I, therefore, conclude that the issuance of the warning notices changed the terms and conditions of employment, and thereby

constituted violations of Section 8(a)(1), (3), and (4) of the Act.

Furthermore, regardless of whether Wells and Tackett actually committed infractions of the rules, the rules, themselves, as appear *infra*, were adopted and implemented in violation of Section 8(a)(5) of the Act. Thus, the use of the warning notices were *per se* violative of the Act.

D. *The Alleged 8(a)(5) Violations*

The General Counsel contends that in violation of Section 8(a)(5) of the Act, Respondent unilaterally instituted the work rules referred to above, including penalties to be imposed on offenders, issued warning notices pursuant thereto for infractions, and unilaterally instituted a 90-day probationary period for new hires, at a time when Respondent was obligated to recognize and bargain with the Union pursuant to its certification. The General Counsel contends further that Hollander's refusal to discuss Wilson's grievance with Reese for relief on the elbow machine, denied union representation to Wilson, also in violation of Section 8(a)(5).

As found above, the evidence does not establish the prior existence and/or posting of each or any of the rules before their posting herein. Even assuming that some had been posted years ago, I find they had been abandoned by lapse of time and were unilaterally revived and invoked. Nor is it necessary to determine which, if any, of the rules constitute mandatory subjects of bargaining. The fact that penalties were prescribed for breaches thereof sufficiently affected the conditions of employment to make them mandatory subjects of bargaining. Their unilateral promulgation and implementation were in derogation of Respondent's obligation to bargain pur-

suant to the Union's certification in violation of Section 8(a)(5) and (1) of the Act.³⁹

The evidence shows that in March, Messer was hired as a 90-day probationary employee. According to the unrefuted testimony of Wells, that practice had not been followed previously. The General Counsel contends that instituting a probationary hiring practice following the Union's certification without consultation with it was in derogation of Respondent's obligation to bargain in violation of Section 8(a)(5) and (1) of the Act. It is well settled, and I find, that unilaterally instituting a new hiring practice, a mandatory subject of bargaining, constitutes a violation of Section 8(a)(5) and (1) of the Act.

[16] I find no merit in General Counsel's contention that Wilson was deprived of union representation when Hollander declined to talk to Reese about her grievance. The testimony of Reese shows that in refusing to discuss anything with Reese, Hollander told her "If you have anything to say about the Union or any of my employees you are to go to through my representative, Harvey Rector," and that she was ordered to leave the plant. It appears further that shortly thereafter Janetzke discussed the matter with Rector and it was expeditiously resolved adversely to Wilson. I find that Hollander did not deny Wilson union representation but, in fact, declined to represent himself and insisted that the grievance or other union matters be discussed with Rector, his representative, which is what subsequently transpired. In view of these circumstances, I find that the General

³⁹*The Timken Roller Bearing Co.*, 70 NLRB 500, 502, fn. 3, set aside on other grounds 161 F.2d 949 (C.A. 6); *Tower Hosiery Mills, Inc.*, 81 NLRB 658, 660.

Counsel has failed to establish a violation of Section 8(a)(5) of the Act with respect to Wilson's grievance and union representation.

Upon the foregoing findings of fact and upon the entire record in the cases, I make the following:

Conclusions of Law

1. At all times material herein the Union has been a labor organization within the meaning of Section 2(5) of the Act.

2. At all times material herein, Respondent has been engaged in commerce as an employer within the meaning of Section 2(6) and (7) of the Act.

3. The Union is the duly certified collective-bargaining representative of Respondent's employees in the following appropriate unit:

All production and maintenance employees at the Employer's Dayton, Ohio, plant, excluding all office clerical employees, professional employees, technical employees, guards and supervisors, as defined in the Act.

4. Respondent has interfered with, restrained, or coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, within the meaning of and in violation of Section 8(a)(1) of the Act, by promulgating and maintaining no-solicitation and no-distribution rules, interrogating employees concerning union matters, and admonishing employees not to associate with union adherents.

5. In violation of Section 8(a)(3) and/or (4) of the Act, Respondent discriminatorily discharged John Haywood, David Leffler, Pauline Messer, Claudine Tackett, and Phyllis Wilson.

6. In violation of Section 8(a)(3), (4), and (1) of the Act, Respond-

ent discriminatorily changed the terms and conditions of employment by issuing warning notices to employees Wells and Tackett.

7. In violation of Section 8(a)(5) and (1) of the Act, Respondent failed to bargain with the Union by unilaterally and without consultation with the Union posting and adopting work rules, and instituting a probationary period of employment for new employees.

8. Respondent did not commit alleged violations not specifically found herein.

[17] 9. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), (3), (4), and (5) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent has discriminatorily discharged certain employees, I shall recommend that Respondent recall all employees so discharged and offer to reinstate them to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered as a result of the discrimination against them. Backpay shall be computed on a quarterly basis and in a manner consistent with the Board policy set forth in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716. Having found that warning notices were issued to certain employees by Respondent in violation of the Act, I shall recommend that it rescind such notices and delete them from the

employment records of said employees. Having found that Respondent failed to consult and/or bargain with the Union as the duly certified bargaining representative of its employees in the unit found appropriate regarding the terms and conditions of employment, I shall recommend that it rescind and withdraw its posted work rules and regulations and the practice of hiring new employees on a probationary basis, and bargain with the Union concerning such terms and conditions of employment.

The Union also requests, in addition to backpay recommendations made herein, that the employees be made whole for any wages and benefits which they might have received had Respondent bargained in good faith and negotiated a bargaining agreement. The request is not recommended on the grounds that the Board has not adopted that policy, which is pending consideration before it, nor was evidence adduced for its support at the hearing herein.

In view of the broad scope and nature of the unfair labor practices found herein and Respondent's past history of unfair labor practices, I shall recommend that it cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

Upon the foregoing findings of fact and conclusions of law and upon the entire record in these cases, I recommend the following:

RECOMMENDED ORDER

Respondent, Tiidee Products, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Promulgating and maintaining no-solicitation rules prohibiting employees during nonworking time from soliciting for the Union on Respondent's property.

(b) Promulgating and maintaining no-distribution rules prohibiting employees during nonworking time from distributing materials on behalf of the Union in nonworking areas of Respondent's property.

[18] (c) Interrogating employees concerning union matters within the meaning of Section 8(a)(1) of the Act.

(d) Coercing or restraining employees from associating with union adherents within the meaning of Section 8(a)(1) of the Act.

(e) Discriminatorily discharging, laying off, or forcing termination of, or otherwise discriminating against, employees in order to discourage membership in or support of International Union of Electrical, Radio and Machine Workers, AFL-CIO, or any other labor organization.

(f) Failing to bargain with the aforesaid Union by unilaterally posting and adopting work rules without consultation with the Union as the duly certified exclusive bargaining representative of its employees concerning terms and conditions of employment in the following appropriate unit:

All production and maintenance employees at Respondent's Dayton, Ohio, plant, excluding all office clerical employees, professional employees, technical employees, guards and supervisors as defined in the Act.

(g) Discriminatorily changing the terms and conditions of employment by issuing warning notices to employees imposing disciplinary measures for infraction of work rules in order to retaliate against union adherents and to discourage membership in the aforesaid Union.

(h) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Offer John Haywood, David Leffler, Pauline Messer, Claudine Tackett, and Phyllis Wilson, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered by reason of the discrimination against them, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Notify those employees set forth above, if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(c) Rescind and withdraw the posted work rules and regulations.

(d) Rescind and delete from the personnel files of employees William Wells and Claudine Tackett the warning notices heretofore given to them for alleged infractions of the posted work rules.

(e) Upon request, bargain collectively with the aforesaid Union as the duly certified collective-bargaining representative of its employees in the unit found appropriate with respect to the terms and conditions of employment and embody in a signed agreement any understanding reached.

[19] (f) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and the rights of employment under the terms of this Recommended Order.

(g) Post at its Dayton, Ohio, plant copies of the attached notice marked "Appendix."⁴⁰ Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's official representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 9, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.⁴¹

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

Dated at Washington, D.C.

⁴⁰In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

⁴¹In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 9, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

TXD--164--69

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

This notice is posted pursuant to a Recommended Order of the Trial Examiner, issued after a trial in which both sides had the opportunity to present evidence. The Trial Examiner found that we violated the National Labor Relations Act and has ordered us to inform our employees of their rights.

The Act gives all employees the following rights:

To organize themselves, to form, join, or help unions, to bargain as a group through a representative of their own choosing, to act together for collective bargaining or other mutual aid or protection or to refuse to do any and all of these things.

We assure all our employees that:

WE WILL NOT unlawfully interrogate employees concerning their union activities.

WE WILL NOT discharge, lay off, force termination of, or otherwise discriminate against employees in order to discourage membership in or support of International Union of Electrical, Radio and Machine Workers, AFL-CIO, or any other labor organization.

WE WILL NOT promulgate, maintain, or enforce no-solicitation rules prohibiting solicitation on behalf of the Union during nonworking time on our property.

WE WILL NOT promulgate, maintain, or enforce no-distribution rules prohibiting the distribution of material on behalf of the Union during nonworking time in nonworking areas of our property.

WE WILL NOT change working conditions of our employees by posting work rules and regulations and imposing penalties for infractions thereof without consulting with the Union, nor will we post such rules and regulations in order to retaliate against our employees for their union support.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights under the Act.

WE WILL make whole John Haywood, David Leffler, Pauline Messer, Claudine Tackett, and Phyllis Wilson for any loss of earnings they may have suffered by reason of their discriminatory discharges and offer them reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL notify any of the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

WE WILL rescind and delete from the personnel files of employees William Walls and Claudine Tackett the warning notices heretofore given to them for alleged infractions of the posted work rules.

WE WILL rescind and withdraw the posted work rules and regulations.

WE WILL, upon request, bargain collectively with the above Union as the duly certified collective-bargaining representative in the unit found appropriate for bargaining purposes with respect to the terms and conditions of employment and, if an understanding is reached, we will embody such terms in a signed agreement.

THIDEE PRODUCTS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Federal Office Building, Room 2407, 550 Main Street, Cincinnati, Ohio 45202, Telephone 513--684--3686.

[Caption Omitted in Printing]

FOR RELEASE SUNDAY PAPERS

JUN 29 1969

DECISION AND ORDER

On April 11, 1969, Trial Examiner William W. Kapell issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices in violation of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent and the Charging Party filed exceptions to the Trial Examiner's Decision and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision,^{1/} the exceptions and briefs, and the entire record in this case, and hereby adopts the findings,^{2/} conclusions, and recommendations of the Trial Examiner.

^{1/} In his Decision, the Trial Examiner inadvertently cites Case 9-CA-4440 as Case 9-CA-440. He also inadvertently failed to place the word "not" between the words "is" and "necessary" at line 43 in footnote 23 of his Decision. These inadvertencies are hereby corrected.

^{2/} These findings are based, in part, upon credibility determinations of the Trial Examiner to which the Respondent has excepted. After careful review of the record, we conclude that these credibility findings are not contrary to the clear preponderance of all relevant evidence. Accordingly, we find no basis for disturbing these findings. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 182 F.2d 362 (C.A. 3).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondent, Tildce Products, Inc., Dayton, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D. C.

Frank W. McCulloch,	Chairman
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Gerald A. Brown,	Member
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Sam Zageria,	Member
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(SEAL)

NATIONAL LABOR RELATIONS BOARD

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

* * * * *

TIDDER PRODUCTS, INC.

Employer 1/ * Case Nos.

and

* 9-CA-4618
* 9-CA-4639-2
* 9-CA-4710

INTERNATIONAL UNION OF ELECTRICAL,
RADIO AND MACHINE WORKERS,
AFL-CIO-CLC

Charging Party 2/ *

* * * * *

EXCEPTIONS OF THE CHARGING PARTY
TO THE TRIAL EXAMINER'S DECISION

Now comes Ronald H. Janetake, Counsel for the Charging Party, and excepts to the Trial Examiner's failure in the Decision of April 11, 1969, to make certain findings of fact, conclusions of law, and recommendations, as hereinafter set forth.

1. Failure of the Trial Examiner to find the following conduct interfered with employees' Section 7 rights, in violation of Section 8(a)(1) of the Act, to include such findings in the Conclusions of Law and to remedy such violations in the Recommended Order and Notice to All Employees.

A. Page 4, Lines 1-20 and Page 19, Lines 21-22

Rule 13 of the Employer's plant rules.

B. Page 6, Lines 13-24 and Page 19, Lines 21-22

Hollander's remarks to employee Pauline Messer (1) "...we have quite a few troublemakers here, and we do not like troublemakers."; (2) that Messer "...should learn to whom she should talk and to whom not to talk."

1/ Hereafter called Tidder or Employer.
2/ Hereafter called IUM or Union.

2. Page 16, Lines 1-15 and Page 19, Lines 21-22

Failure of the Trial Examiner to find that Hollander's refusal to discuss a complaint of employee Wilson with a union representative, Reese, violated Section 8(a)(5) of the Act.

3. Page 12, Lines 27-38 and Page 13, Lines 1-11

Failure of the Trial Examiner to find the transfers of employee Claudine Tackett, to drill press operator and later to the elbow machine, to be discriminatory conduct in violation of Sections 8(a)(1) and (3) of the Act, to include such findings in the Conclusions of Law and, to provide a remedy as part of the Recommended Order and Notice to All Employees.

4. Page 12, Lines 27-38 and Page 13, Lines 1-11

Failure to find Respondent's conduct in refusing to afford employee Tackett a five minute wash-up period at the end of the work shift violative of Sections 8(a)(1) and (3) of the Act, to include such findings in the Conclusions of Law, and to remedy these violations through the Recommended Order and Notice to All Employees.

5. Page 17, Lines 29-34

Failure of the Trial Examiner to make findings and grant the expanded remedy sought by the Union and to include such remedy in the Recommended Order.

6. IUE notes the Trial Examiner's Decision contains two typographical errors and requests that they be corrected as follows:

A. Page 3, Line 54, footnote 5:

"9-CA-440" should read "9-CA-4440."

B. Page 10, Line 43:

The word "not" should be inserted between the words "is" and "necessary."

BRIEF OF THE CHARGING PARTY TO THE
NATIONAL LABOR RELATIONS BOARD IN SUPPORT OF
THE EXCEPTIONS TO THE TRIAL EXAMINER'S DECISION

CONDUCT ALLEGED TO VIOLATE SECTION 8(a) (1)

Exception 1A (Plant Rule 13)

In January, 1968, immediately after the Board hearing in the previous Tiffice cases ^{3/}, Respondent promulgated a series of plant rules which included the following rule: (18-20, 71, 398-400) ^{4/}

Rule 13: "Entering the plant at times other than the employee's scheduled work shift."

At the same time, Respondent adopted specific no solicitation and no distribution rules, both of which were found by the Trial Examiner to be violative of Section 8(a) (1) of the Act. [TXD--164-69, Page 4, Lines 1-20 and Page 16, Lines 35-40] ^{5/} The unilateral promulgation of these rules was found to violate Section 8(a) (5). [TXD, Page 15, Lines 33-43] All of these rules were called to the attention of union supporters (30-31, 38), and were used to justify the issuance of warning notices to active workers on behalf of the Union. [TXD, Page 14, Lines 49-51, and Page 15, Lines 1-18]

It is the contention of the Union that Rule 13 also interfered with employees' Section 7 rights, since it had the effect of inhibiting non-working employees' organizing efforts in non-working areas. Republic Aluminum Company v. N.L.R.B., 394 F.2d 405 (C.A. 5); Bauer Aluminum, 152 NLRB No. 132. In Sylvania Electric Products, Inc., 174 NLRB No. 159, the Board found Sylvania's rule, which prohibited employees who left the plant from re-entering its premises, to violate Section 8(a) (1). The instant rule has the same effect.

The issue of plant rules was fully litigated at the hearing and, while not alleged as an 8(a) (1) violation in the complaint, can be the basis for an unfair labor practice finding. New England Web, Inc., 135 NLRB 1012; Cadre Industries Corp., 124 NLRB 1370.

Exception 1B (Troublemaker Statements)

On March 27, 1968, Respondent's President Hollander informed new hire Messer, "we have quite a few troublemakers here, and we do not like troublemakers," and that she should learn to whom she should talk and to whom not to talk.... It also appears that similar remarks

^{3/} Cases 9-CR-4440, 4482, 4536, and 4562.

^{4/} The numbers in parentheses refer to pages of hearing transcript.

^{5/} Hereafter, all references to TXD- 164-69 will be noted as TXD, followed by page and line reference.

were addressed to Messer by Supervisor Mary Burgher...." [TXD, Page 5, Lines 28-34] Messer soon learned the term "troublemaker" was synonymous with union adherent and that she had been warned not to associate with them. A similar statement made by Hollander to new hire Leffler was found by the Trial Examiner to violate Section 8(a)(1) of the Act.

Contrary to the findings of the Trial Examiner, IUE contends Messer did comprehend the import of Hollander's and Burgher's remarks. In any event, the statements were calculated to interfere with employee Messer's union activity and were violative of the Act, Hribar Trucking, Inc., 166 NLRB No. 85, even if not immediately or fully understood by her. N.L.R.B. v. American Manufacturing Co., 132 F.2d 740 (C.A. 5).

Exception 2 (Refusal to Discuss Grievance)

On April 16, 1968, employee Wilson, accompanied by union representative Reese, requested an opportunity to discuss relief of Wilson on the elbow machine. Hollander refused to discuss the matter with Reese and ordered both off the premises. [TXD, Page 13, Lines 31-41] This conduct was not found to violate Section 8(a)(5). [TXD, Page 16, Lines 1-15]

It is the contention of IUE, Respondent's acts did violate the statute. The evidence demonstrates Hollander was willing to discuss the same issue individually with Wilson but not while she had union representation. (198-207,222, 332, 354) Hollander's extensive anti-union activity clearly evidences a complete rejection of the collective bargaining philosophy. His willingness to discuss grievances with employees individually, but not while represented by the Union, violated the Act. Texaco, Inc., 168 NLRB No. 49.

Exception 3 (Tackett's Job Transfers)

During April, 1968, Respondent's president twice transferred Tackett to more arduous tasks while work existed in her customary classification. [TXD, Page 11, Lines 27-32] The Trial Examiner characterized this conduct as harassment because of Tackett's union activity [TXD, Page 12, Lines 32-38], but made no findings and failed to provide a remedy.

IUE contends Respondent's conduct violated Sections 8(a)(1), (3) and (4) of the Act. United States Railway Equipment Company, 172 NLRB No. 51. It is requested that the Board provide a remedy for such unlawful acts in its Order and Notice. Respondent's conduct, while not alleged unlawful in the complaint, was fully litigated and is thus the proper subject of a remedial order. New England Web, Inc., 135 NLRB 1019; Cadre Industries, Corp., 125 NLRB 1370.

Exception 4 (Denial of Wash-up Time)

During March, 1968, Respondent discriminated against employee Tackett by denying her a five minute wash-up time at the end of her

shift, while according other employees that benefit. (47-48) Tackett was reprimanded for taking advantage of this benefit accorded other employees. [TXD, Page 11, Lines 10-13] The disparate treatment, for which Respondent offered no justification, was discriminatively motivated and violative of Sections 8(a)(1), (3) and (4). United States Railway Equipment Company, 172 NLRB No. 51. IUE requests the Board make conclusions upon this matter and incorporate an appropriate remedy. This matter may be made a part of the remedial order for the reasons set forth above. New England Web, Inc., supra; Cadre Industries, Inc., supra.

Exception 5 (Remedy)

IUE requests the Board take official notice of the proceedings and evidence adduced by the Union in cases 9-CA-4440, 4488, 4536, and 4563. The violations found in the instant cases are a continuation of and involve some of the same issues as the prior proceeding. Under such circumstances, it is appropriate for the Board to take judicial or official notice of the prior proceedings in part or in their entirety. Santa Clara Iron Association, 116 NLRB 44, 46, 49.

In the prior proceedings the Charging Party adduced uncontroverted testimony of an experienced negotiator, L. W. Wornstaff, who has served in various capacities with several unions in excess of twenty years. (494-496) 6/ Wornstaff bargains as many as fifteen to eighteen agreements per year and has negotiated many first contracts. (496-497) He testified it to be his experience that 75 to 100 days normally elapse after certification before a first contract is agreed upon, if the employer bargains in good faith. (498) Wornstaff, further, testified this period was normally reduced where the employer retains experienced assistance, which Respondent Tiidee has done. (498-499)

For administration purposes, IUE has placed the Tiidee unit in its amalgamated Local 768. (503) Local 768 consists of twenty-six units, numbering between 10 and 550 employees each. (496-497) Thirteen of these units number 20 to 50 employees. (497-498) which is the range in which Tiidee's employee complement would fall. [G.C. Exhibit 1(jj)]. A wage comparison, marked as "Charging Party Exhibit 1," clearly establishes that Tiidee rates of pay are substantially below the rates paid in Dayton area IUE plants to employees in similar classifications. 7/

On December 12, 1967, IUE submitted a complete contract proposal to Respondent. (G.C. Exhibits 13 and 14) As set forth in G.C. Exhibit 13, despite Respondent's refusal to recognize and bargain with IUE, the Union requested that a minimum increase of fifteen cents (15¢)

6/ Hereafter the numbers in parentheses refer to pages of hearing transcript in 9-CA-4440, 4488, 4536, and 4563. All exhibit references are to exhibits in this series of cases.

7/ Rates in IUE Dayton area plants are established by Charging Party Exhibits 2, 3, and 4. The Tiidee rates, shown on Charging Party Exhibit 1, are substantiated by testimony of employee witnesses called by the General Counsel.

per hour be given all employees no later than December 25, 1967 and, thereafter, on February 1, 1968, when the minimum rate under the Fair Labor Standards Act went to \$1.60 per hour, a twenty cents (20%) increase be given all employees. This would bring employees earning \$1.40 per hour to a rate of \$1.75 per hour, or a gross of \$70.00 for a 40-hour week. Thus, even with the proposed increases, Tidee employees would be far behind the prevailing area wages for similar work.

The normal or standard Board remedies in all cases, and especially in refusal to bargain situations, are increasingly coming under question by labor organizations, Congress, the Courts, Trial Examiners, and the Board, itself. The problem of developing an effective remedy in a refusal to bargain case is compounded because of the delay factor inherent in Board and especially in Court procedures. While the Board and, more particularly, the General Counsel have improved internal procedures reducing the extended delays of the past, an employer, merely by insisting upon full litigation of its refusal to bargain, can successfully forestall collective bargaining for at least two years.

The protracted Section 8(a)(5) litigation, with the aforementioned delays, which is available to any employer willing to spend money to delay bargaining, is a distressing by-product of inadequate refusal to bargain remedies. For many, or even most, employers it is less expensive to pay the costs of extensive litigation than to bargain in good faith with the employees' chosen representative. Further, knowledgeable labor representatives understand that an employer determined to defeat effective unionization, who is willing to litigate unfair labor practice charges, often succeeds in ousting the union, despite the Board's findings of Section 8(a)(5) violations especially where, as here, the employer embarks upon a course of conduct to dissipate the union's majority status. Extended postponement of statutory rights of workers to bargain effectively nullifies the workers' faith in the union to achieve even the basic goals they sought in unionization. No union can support an organizational effort, that may easily extend in excess of three years, without despair replacing once high hopes of obtaining benefits through concerted and collective action. Further, by the time a final order is realized, the employer, in most instances, has undergone extended changes in personnel and, in this period of technological innovation and profound changes in the economy, the employee may have lost the basis upon which he sought organization and which gave rise to the necessity for Board intervention.

Statistics published in the Board's annual reports clearly establish that there has been a steep rise in Section 8(a)(5) cases. The greatest contributing factor to this increase is the ineffectiveness of the Board's traditional remedies to encourage voluntary compliance of employers with their statutory bargaining obligation. The Board's refusal to bargain remedies are just not adequate to achieve the purposes of the Act. If litigation is to be reduced, the Board and Courts must fashion and adopt adequate and realistic remedies in cases where the employer demonstrates a determined intent to frustrate the Act.

The Board has sufficient authority, broad discretion in, and the responsibility of devising remedies to effectuate the purposes and policies of the Act. The Board's statutory mandate and enlightenment gained through experience gives it a peculiarly administrative competence to establish remedies that will encourage employers' compliance with their statutory bargaining obligation. N.L.R.B. v. Seven-Up Bottling Co., 344 U.S. 344, 346; Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177, 194.

The Board's primary aim is and must be to reestablish the status quo ante to the greatest extent feasible. Of course, any remedy must not impose an undue or unjust burden on the employer. In cases of employer refusal to bargain, two parties must be made whole--the employees and their union. This remedy must be designed to bring the parties to the bargaining table. It also must be made more expensive for an employer to refuse to bargain where that refusal is a sham. The Board's normal remedy does not accomplish these objectives. While they may bring the parties together for negotiation belatedly, they do not make either the employee nor his chosen representative whole for losses suffered as a result of the employer's unlawful and dilatory tactics. These ineffectual remedies, coupled with associated litigation delays, reward employers determined to refuse to bargain. In initial bargaining cases, the normal remedies are the least effective.

While the Board has discretionary authority to seek injunctive relief under Section 10(j) of the Act, it has exercised that authority sparingly. Its success in securing such equitable relief has been modest, which no doubt accounts in part for its apparent reluctance to seek such interim relief. The Board, perhaps with good cause, appears disposed to proceed slowly in establishing the scope of Section 10(j). While the Board has increased its requests for injunctive relief, it seldom considers employer's conduct to be "flagrant" where the impact upon commerce and the public interest are slight. Swift corrective action afforded by Section 10(j) was not considered warranted in previous cases, and the undersign's request of December 18, 1967, was orally denied. 8/

Charging parties have sought innovations in remedies and new approaches. However, the Board has recently declined to order an employer found to have unlawfully refused to bargain in good faith to make any benefits subsequently negotiated into a contract retroactive to the day of the employer's first refusal to bargain. It has declined also to assess attorneys fees in cases of Section 8(a)(5) violations.

Board cases in which similar employer violations of good faith bargaining exist speak in terms of compensatory damages. While it might be argued the nature of the remedy IUE seeks here is compensatory damages, the purpose of the remedy sought, no matter what it is "tagged," is to make the employees whole for loss of benefits incurred because of the Respondent's unlawful refusal to bargain. IUE established that in the normal course of events had Respondent bargained in good faith, a contract would have resulted in approximately 100 days. IUE further

8/ A copy of this request is attached hereto as Appendix A.

established what rates it has secured in comparable area plants where it acts as bargaining agent. The established rates in organized shops for job classifications similar to Respondent's are substantially higher. This offers an objective criteria upon which a reasonable determination of the extent of loss to the employees can be computed with acceptable precision.

An obvious objection is the "if" factor. However, this factor is present in every case where backpay is involved. As anyone who has used the various Board and Court accepted methods of computing backpay knows, use of one method or another can result in substantial differences in the net backpay due. Couple these various methods with the varying fact situations causing difficult and close determinations on such matters as interim earnings, it is readily apparent that all attempts to make employees whole are speculative in nature. It is the position of IUE that the nature and extent of the employees' loss can be and has been established here and, while it may be difficult to decide just what criteria can best be used, the record establishes the employees have suffered a loss and would have obtained some increased benefits had Respondent complied with its statutory obligations.

IUE maintains that one reasonable method, in view of wages paid to employees of other area employers in similar classifications, would be to add at least fifteen cents (15¢) per hour to each classification over the actual rate paid employees by Respondent during the whole of the period of its refusal to bargain, computed from the date a contract would have been signed if good faith bargaining had occurred. To insure that Respondent will not deliberately withhold increases, all increases (absent voluntary increases) after the beginning date of computation shall be geared to the Consumer Price Index of the Department of Labor for the standard reference base period of 1957-1959=100. 9/ A one cent (1¢) adjustment should be made of each 0.4 increase in the index. 10/ This remedy is suggested as a possible alternative to the median or average wages paid by similar employers under union contracts methods. Interest should be added in accordance with the formula established by Isis Plumbing.

At a minimum, employees' backpay should be computed by adding to their actual rate increases warranted by use of the aforementioned Consumer Price Index and percentage adjustment. This would at least assure that they would not fall farther behind other organized plants. Such a cost-of-living increase would not be "speculative" or undeterminable as to what rates would govern backpay. Most important, it would go a small way in preserving the status quo while the Respondent's refusal to bargain is litigated.

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- 9/ The complete name of this index is "Index of Change in Prices of Goods and Services Purchased by City Wage-Earner and Clerical-Workers Families to Maintain Their Level of Living."

An example of the way this method would work is attached hereto as Appendix B.

- 10/ The change in index factor has been accepted as the basic measure for change in most labor agreements. The factors range from 0.3 to 0.5, with 0.4 being the most common.

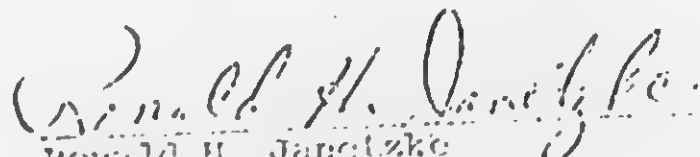
IUE does not maintain each of these proposed remedies would be appropriate in all refusal to bargain cases. Where the facts establish an employer's refusal to respect its statutory obligation (when that obligation is clear and unambiguous) is motivated by a determination to use the Board and Court processes in an effort to defeat the effective organization of its plant, both the employees and union should be made whole for losses suffered as a result of the employer's unlawful acts.

The evidence clearly establishes that Respondent has raised sham reasons for refusing to bargain with IUE. As indicated above, it is well established that pendency of litigation, including pending unfair labor practice charges, does not excuse Respondent of its statutory bargaining obligation. This principle has been accepted by the Board and the Courts. Respondent also apparently objected to the election on the grounds IUE violated the Board's rule on campaigning. It is clear no violation of the Peerless Plywood rule (107 NLRB 427) occurred. The undersigned was unable to find one Board or Court case where campaign literature, such as that distributed by IUE on the morning of the election, was found to constitute grounds for setting aside an election. No one in good faith could maintain the questioned leaflet constituted grounds for setting aside the election, in view of cases such as: Burson Plant of The Kendall Company, 115 NLRB 1401; Machinery Overhaul Company, Inc., 115 NLRB 1737; Radio Corporation of America (RCA Victor Div.), 106 NLRB 1393. The NLRB Rules and Regulations and Statement of Procedure, Series 2, as Amended, Section 102.69 and the Agreement for Consent Election, gave IUE the right to challenge the eligibility of any voter. This procedure has been approved by the Courts. N.L.R.B. v. E.J. Tower Company, 329 U.S. 324; N.L.R.B. v. Norris, Inc., 162 F.2d 50.

For the considerations assigned herein, the Charging Party requests the Board grant the remedies sought, so that all employees and the Union will be made whole for losses incurred because of Respondent's unlawful conduct.

Dated at Kettering, Ohio this 2nd day of May, 1969.

Respectfully submitted,


 Ronald H. Janetzke
 General Counsel
 District Council 7
 IUE-UMW CIO-COC

VOLUME I

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Region 9

+ + + + + + + + + + + + + + +

In the Matter of: +

TIIDEE PRODUCTS, INC. +

and +

INTERNATIONAL UNION OF
ELECTRICAL, RADIO AND
MACHINE WORKERS, AFL-CIO +

+ + + + + + + + + + + + + + +

Case No. 9-CA-4612

9-CA-4639-2

9-CA-4710

Court Room No. 4

Montgomery Court Courts Building

Dayton, Ohio

Wednesday, September 18, 1968

Pursuant to notice, the above-entitled matter
came on for hearing, at 10:30 o'clock a.m.

BEFORE:

WILLIAM W. KAPPELL, ESQ.

- TRIAL EXAMINER.

APPEARANCES:

STEPHEN S. PROCKT, ESQ.

Room 2407 Federal Office
Building, Cincinnati, Ohio
appearing on behalf of the
General Counsel, National
Labor Relations Board.

RONALD H. JANETZKE, Esq.

3461 Office Park Drive,
Kettering, Ohio, 45439,
appearing on behalf of the
Charging Party.

HARVEY B. RECTOR

Rector & Associates, 2722
Manchester Avenue N.W.,
North Lawrence, Ohio, 44666
appearing on behalf of the
Respondent.

5

MR. PROCKT: Your Honor, these cases have been consolidated for trial alleging violation of Sections 8(a)(1), (3), and (4), and (5) of the Act. General Counsel will prove that Respondent continued its illegal actions which have occurred actually since July, 1967. Of course those occurring before January, approximately January, 1968 were tried in a preceding case. The Decision of the Trial Examiner, which issued August 28, 1968, in TXD 46-68.

9

MR. PROCKT: Also we would ask the Trial Examiner in this case to not only take judicial notice of the undisputed 8(a)(5) facts involving certification in the preceding cases, but also take judicial notice at this time before the Board Order issues of all undisputed facts as far as dates, et cetera in the preceding cases. And of course if the Board would issue an Order before you would make your Decision, General Counsel would request that you take judicial notice of the entire Order and the Trial Examiner's Decision, if it is adopted, including all the facts included therein.

TRIAL EXAMINER: I would have no other choice.

11

TRIAL EXAMINER: Well, let's dispose of the other matter first.

I am not going to take judicial or official notice of the other trial examiner's case.

As far as the certification is concerned, that

is a matter of which I will take judicial notice, as something issued by the Board, not something that the other trial examiner ruled upon.

15

MR. FROCKT: All right. I would just for your information, so you don't have to look through all the records, give you this, without any comment on what happened in the previous proceeding case, a short list of about five dates to show you the general dates here so you'll have some background as to what has happened previously. It is very short.

On August 1, 1967 the Union herein filed a petition involving this company; a consent agreement was reached on September 1; it was approved by the Regional Director --

16

MR. RECTOR: I believe we can stipulate this part.

MR. FROCKT: Yeah. Well, I want to get it in so he can understand it, you know.

September 14, 1967, an election was held, the results are in the Decision. The Union was elected, the majority shows the Union -- all right. Objections were filed on September 19, 1967. On November 8, 1967 the Regional Director issued his Election Report and Certification. And on January 16th, 17th and 18th, 1968 the trial in the preceding cases were held.

And that's merely what I want, just so you'll have some background as far as the time here.

I would amend one of the petitions -- I mean, I'm sorry complaint -- move to amend Section 12(b) of 9-CA-4710. I'm not adding anything, I'm just amending the date. It reads now, "On or about March 20, April 1, April 17, and May 16, 1968 in issuing written warnings to its employees concerning alleged violations of rules described in subparagraph (a), above...", I would amend the April 1 date to read April 10. It was merely a typographical error.

* * *

TRIAL EXAMINER:

* * *

Now, we have the rules. Mr. Rector and I, I believe -- I am offering this stipulation, that I have marked for identification a document, General Counsel's Exhibit 2, which is a copy of these rules, which in fact Mr. Rector sent to our office, and I move their admission.

[Whereupon, the document, above referred to, was marked General Counsel's Exhibit No. 2, for identification.]

MR. FROCKT: Rules No. 5 and 7 relate specifically to the non-distribution, non-solicitation question.

TRIAL EXAMINER: Those are the only ones that are pertinent in these rules?

MR. FROCKT: Well, we're alleging that the institution of the rules is a violation of Section 2(a)(5)

of the Act, technically that the Union wasn't bargained with for them.

TRIAL EXAMINER: Yes.

MR. FROCKT: Bu as far as to the specified rules, the two specified rules being invalid, we're alleging those two as being invalid ones. It's a two-fold thing.

19 TRIAL EXAMINER: In understand. One is the issuance of the rules, and the other is the rules per se.

MR. FROCKT: The two separate rules.

MR. RECTOR: Now, I --

MR. FROCKT: And I think Mr. Rector will agree that sometime in January, after the first hearing these were posted. So I think you would stipulate everything I've said, wouldn't you?

MR. RECTOR: Not everything.

MR. FROCKT: Not, that they're invalid rules, but you'll stipulate to the fact that the rules --

MR. RECTOR: I will stipulate to this, those rules were posted after the election. Now, those rules have also been posted four or five years ago prior to another hearing. They're old rules.

20 MR. FROCKT: Do I understand that you do stipulate they were posted after -- in January, as we allege?

MR. RECTOR: Yes, I'll stipulate they were.

21

CLAUDINE TACKETT

a witness called by and on behalf of the General Counsel,
being first duly sworn, was examined, and testified as
follows:

TRIAL EXAMINER: Be seated, please.

DIRECT EXAMINATION

BY MR. FROCKT:

Q State your full name, please.

A Claudine Tackett.

Q And your address?

A 1804 Brookline Avenue, Dayton, Ohio.

Q Okay. Mrs. Tackett --

A Yes.

Q -- when were you first hired by the company?

A January of 1967.

Q '67?

A Yes.

Q All right. And you testified in the preceding
hearing?

A Yes, I did.

Q Who did you testify for - General Counsel?

22 A Yes.

Q Now --

TRIAL EXAMINER: Mr. Pector, -

MR. PECTOR: Object.

TRIAL EXAMINER: - would you concede with regard to the witnesses who are alleged to be 8(4) that they testified in the prior proceeding on behalf of the General Counsel, and adversely to the Respondent? These are documentary matters which I don't believe will require any discussion or contest.

MR. RECTOR: Absolutely. I will stipulate.

MR. FROCKT: Phyllis Wilson and --

MR. RECTOR: All the witnesses.

TRIAL EXAMINER: All those alleged in these three complaints.

MR. RECTOR: Right.

MR. FROCKT: Yes.

MR. RECTOR: We will stipulate to that.

TRIAL EXAMINER: All right.

BY MR. FROCKT:

Q Now, from the time of the preceding hearing, starting at that time, after you testified were you working for the company?

A No, I wasn't.

Q All right. Did you eventually go back to the company and work for a period of time?

A Yes, I did.

Q All right. When did you actually go back to work?

A You mean after the hearing?

Q Yes. What was the date?

A March the 12th, 1968.

Q All right. Now, before that date did you have a conversation with Mr. Hollander, the President of the company concerning going back to work?

A Yes, I did.

Q When was that?

A It was in February, the last of February. I called him on the phone.

Q Now, you say the last of February. Can you give us the exact date?

A Around the 28th of February.

Q Okay. Now, tell us -- You say you called him on the phone?

A Yes.

Q Tell us in your own words about this conversation.

24 A Well, I had found out that he was having applications filled out, and I called him and asked him if I could fill out an application. And he said it wasn't necessary, it was just for the ones that was working for him then, and it was for records. He had been getting some bad phone calls, and some wrong social security numbers, and he said that this was all it was for, and it wasn't necessary

for me to fill out one.

And I asked him about goinb ack to work. He said when he seen fit, and when his business picked up, why, he would call me back.

Q Had you talked to him on the phone before?

A Yes, I had.

Q Did you recognize his voice?

A Yes, I can.

Q Okay. Fine. Now, you stated you went back to work on the 12th of March.

A Yes.

Q Did you have another conversation with Mr. Hollander before you went back?

A Yes. He called me Tuesday evening about 4:30.

Q What date would that be?

A March 11th.

Q All right. He called you at home.

A That's right.

Q All right. Tell us what was said.

A He asked me if I would come back to work, if I could come back to work. And I told him yes, I could. And
25 he asked me if I could come back in the morning, and I told him yes - on March the 12th. And he says, "All right," he said, "be at work at 8:00 o'clock".

Q Did you in fact return to work?

A Yes, I did.

Q All right. When you got there at 8:00 o'clock what did you do?

A I went into the lunch area.

Q What happened next?

A Mr. Hollander told me to come on in, and we went into the office, and he took Mary Burgher and Me. Hershey with him, and we went in there and he told me I had to get a few things straight, that Mel and Mary was not supervisors, and he was tired of my doing bad work, and that I was not to cause any more trouble.

Q Did he say anything else that you can recall during this conversation?

A Not that I can recall.

Q All right. Did he say anything about how your work would change, if any?

A Yes. He told me that from now on that I would not leave my work area, that my boxes would be brought to me, and Patty would come and get them and take them to shipping.

26

A Patty Lewis.

And that he would inspect my work personally.

Q Who would?

A Mr. Hollander would.

Q All right.

A. And that my boxes would not be sealed like I had always done before.

Q. Now, did he say anything else about how your work might change?

A. No.

Q. Now, do you recall anything further about the conversation?

A. Only that I wasn't supposed to leave my area.

Q. Well --

A. I wasn't supposed to --

Q. Tell us everything you can recall.

A. I wasn't to go around in the plant, like, you know, I had always been able to before, to get my boxes upstairs, and --

Q. What did he say? I don't want to know what you understood. I want to know what he said to you.

27

A. That I was not to leave my area any more, my work area; just that I was to -- like I had always done before. I had always gone up and got my boxes and taken them to shipping, and everything, and I wasn't to do this any more.

Q. All right. Now, how did your work change, how did these instructions change your preceding job? Let's take them -- How about the inspection of work? Who did that before?

A I did.

Q Who sealed the boxes before?

A I did.

Q Did he say anything about records?

A Yes. Before I had always kept a little pad there at my desk, at my work area, and I had always wrote down how many I had each day, and this was my own record. And he told me that I wasn't to keep records any more, that they would for me.

Q All right. Tell the Trial Examiner what exactly you did before you got laid off in September, and what you did as far as these boxes. Tell him what you do actually.

A Well, we have to wind them first.

Q Now, tell him what it is that you have to wind because he doesn't know.

A We have to wind water hoses, they're plastic water
28 hoses. They come in different lengths. They come in 5', 10'
and 15' and 20' lengths.

Q What are they used for, do you know?

A Well --

Q Is this the hose?

[Object shown to witness.]

A That's a new hose. It wasn't in -- We didn't use it before the election. But after I went back to work in March, it is a new stiffer hose than we had used before.

Q And you cut these in different lengths? Is that right?

A They were cut in different lengths.

Q 5', 10', 25'?

A Right.

29

A This was a stiffer hose which we hadn't used before, and we were still using this same process, and we had to wind them on the winder, and my procedures before was to make five boxes, wind five boxes and then go over and put the couplings on this, and then get them ready for shipping.

And when I went back, why, Mr. Hollander told me I could only make one box at a time, a complete process, because he didn't want me to be crowded around my work area.

Q Now, how did this affect your production? Did it help it?

A No, it didn't. It was harder to get them out because you have to stop and go through this same thing over and over and over and over.

Q Oh, I see. Now, on the 12th you went back to work. Right?

A Uh huh. Yes.

Q Now, did Mr. Hollander talk to you about your work, however, during the next -- during this period of employment?

30 A Yes, he did. He told me I had --

Q Well, how many times did he talk to you about your work?

A Well, it was about every morning when I would go in.

Q All right. Let's take the next morning, for example. What was -- Did he say anything to you the next morning, on the 13th of March?

A He told me that --

Q Wait a minute now. Just answer my question.

A Yes.

Q All right. When did he talk to you, what time during the day?

A It was usually in the morning.

Q And where did he talk to you on this occasion?

A At my work area.

Q All right. Now, on this occasion what time was it?

A It was right after I had went to work at 8:00 o'clock.

Q All right. Was anybody else present?

A No, sir.

Q All right. Now, tell us in your own words the conversation between you and Mr. Hollander that day.

A He come to get me at my work area, and had asked

31 me if I had read the rules. And I told him no, I hadn't read them. And I went to the lunch area, and he said, "Would you like to read them?"

And I said, "Sure I would."

And I proceeded to read them. And he walked back and forth until I was done.

Q Just a second. Now, did Mr. Hollander talk to you several times during your period of employment?

A Yes, he did.

Q Could this occasions you're just talking about not be another occasion?

A Yes, it could.

Q All right. On the 13th did he talk to you about your work in specific, not about general rules but your work, about your work?

A Well, he told me that I had to get out more production.

Q Now, did he in fact talk to you about this on the 13th?

A Yes, he did.

Q Okay.

A In fact this was a general thing that he talked to me quite a bit about.

Q Well, tell us what he said on the 13th about your production.

32 A He says that I had to get out 27 boxes a day, and if I didn't -- because he wasn't making no money on the job, and if I didn't keep production up - and then he didn't finish the sentence.

Q Well, during this conversation did you say anything to him?

A I told him I never had got that many out, and he had never required us to get that many out. In fact he never put a limit or a quota on what we had to get out. If we got out 12 a day, or if we got out 13 boxes a day it was all right with him, he never said anything to us before the election about it, and what production I had got out I had set the goal myself, and I had set the production myself, but I had never got out no 27 boxes a day.

Q What was the most you had ever gotten out during a day?

A I could have got out 23 myself. We had two girls on there for a while and we could only put out 52 boxes a day, and she run one part of the production and I run the other.

Q Now, did you have another conversation with Mr. Hollander on the second day you were there?

A I don't know if I did or not.

Q Well, do you recall it at this time?

A No, I don't.

33

Q Well, did it have anything to do with Patty Lewis?

A That was one of the other days that he had come to me and --

Q All right.

A I was having trouble.

Q I'm sorry. That's my fault.

A I was having trouble with winding these hose. They were a new, a different hose and we were still using the old way of doing things, and I had tried to wind them on the winder and they wouldn't wind, they kept flying off, and they wouldn't stay tied after we tied them.

Q Okay.

A So I had found out that--I wa scared, let's put it that way, that if I didn't get out so many, and I was trying to do them the quickest way that I could, and I started to wind them by hand, and he come back and seen it that I was winding them like this, and he asked me why I wasn't doing it on the winder, and I told him I couldn't, and he says, "You mean you can't do the job?"

I says, "No," I says, "I don't know how." So I said I would like for somebody to show me how to do them. So he went over and got Patty and brought her back, and she wound one and tied it and took it off the winder and handed it to him, and it flew loose. So he told her to wind another

34 one. And they experimented there for a hile, and then finally she went and got tape and taped it up. And this didn't look right, and so he told me just to use the winder on them and wind them a little bit tighter and put ties on them, and then he left.

Q Now, how long after you came to work did this incident occur?

A It was in the first week or two after I went back to work.

Q Did you receive -- Have you ever received any disciplinary action from the company?

A Yes, I have.

Q What did that consist of?

A I received slips of paper.

Q Are you telling us warning notices?

A Yes. I received three.

Q All right. Now, was this conversation concerning the water hoses before you received your first warning notice?

A Yes, it was.

Q All right.

MR. PROCKET: 4-A.

[Whereupon, the document, above referred to, was marked General Counsel's Exhibit No. 4-A for identification.]

35

MR. FROCKT: 4-B.

[Whereupon, the document, above referred to, was marked General Counsel's Exhibit No. 4-B, for identification.]

MR. FROCKT: And 4-C.

[Whereupon, the document, above referred to, was marked General Counsel's Exhibit No. 4-C, for identification.]

BY MR. FROCKT:

Q All right. I hand you -- You said that you received warning notices. I am handing you a document which has been marked for identification as General Counsel's Exhibit 4-A, and ask if you can identify that exhibit?

[Document handed to witness.]

A Yes, I can.

BY MR. FROCKT:

Q Now, what is that?

A It is a warning notice.

Q Who got it?

A I did, Claudine Tackett.

Q All right. And what date did you get that on?

A I got it on March 20th.

Q All right. You don't have to read what it is.

It speaks for itself.

You did receive this?

36

A

Yes, I did.

Q

Who gave it to you?

A

Mr. Hollander.

MR. FROCKT: All right. I move for the admission of 4-A. Okay?

MR. JANETZKE: No objection.

MR. RECTOR: No objection.

MR. FROCKT: And I move after the hearing to substitute copies for all of this.

TRIAL EXAMINER: Do you have several warning notices?

MR. FROCKT: Yes.

TRIAL EXAMINER: Can you stipulate that all of them were received?

MR. RECTOR: We can stipulate to all of them, sir.

TRIAL EXAMINER: All right. That would be General Counsel's 4-B.

MR. RECTOR: Yes, sir.

MR. FROCKT: General Counsel's 4-B, which is the 4/17 notice?

MR. RECTOR: Right.

MR. FROCKT: And General Counsel's 4-C, which is the 5/6 notice?

MR. RECTOR: We can stipulate to that.

37

MR. FROCKT: All right. I move for the admission of all.

TRIAL EXAMINER: They'll be admitted.

[Whereupon, the documents, heretofore marked General Counsel's Exhibits Nos. 4-A, 4-B, and 4-C, for identification, were received in evidence.]

BY MR. FROCKT:

Q Now, in the instance of the first warning notice, the warning notice states, "Violation of Minor Rule #18. Next violation of a minor rule shall result in a 3 day layoff." And it has Defective Work and Carelessness as the rules they were talking about.

Now, what rules were Mr. Hollander speaking about in this warning notice?

A The rules that he has posted on his - by the time clock.

Q Now, I'll hand you General Counsel's Exhibit 2, and ask if those are the rules that were posted?

[Document handed to witness.]

A Yes.

BY MR. FROCKT:

Q Okay. Now, did Mr. Hollander ever point those rules out to you?

A Yes, he did.

38 A Well, when he come and got me --

Q Well, when?

A The first week that I was back to work.

Q Well, in relation to the first warning notice on March 20, you' relating an incident -- when did that occur?

Q I think it was on the 13th of March.

Q All right. All right. Well -- all right.

A Around about that time.

Q All right. Okay. Now, tell us about that incident.

A He come to my work area and asked me to go with him, and I went with him into the lunch area, and he had asked me if I had read the rules, and I told him no, I hadn't. And he asked me if I would like to, and I told him sure.

39 Q Okay. Now, you received this warning notice on March 20?

A Yes.

Q Tell us what happened that day.

A Well, I had worked all day that day, and as quitting time come I went to the lunch area, as we always did, and Mr. Hollander come out of his office and he stood there a few minutes, and then he motioned for me to come over there, and I did, and he said, "Come with me in the office", and we stood in this section of his office a few minutes, and Mary Burgher come in, and then we all went

into his office, and he asked me if I had worked on 15' hose that day, and I told him yes, I had, and he sent Eleanor out --

Q Eleanor?

A Eleanor Kleismit.

and she brought back a hose that had three couplings on it. And Mr. Hollander took it and he asked me was this my work, and I told him I couldn't tell if it was my work or not. He said it was laying on top of my box. And I told him I could not tell if it was mine or someone else's, because Patty and Eleanor would work on that from 7:00 to 8:00 before I would come in in the morning

Q Patty?

A Lewis.

Q And Eleanor?

A Kleismit.

Q Go ahead.

A And then he handed me this slip. And then his son handed him the pen, and he signed it, and he told me if I got another one this would mean a 3-day layoff.

Q Now, you state Eleanor and - who else?

A Patty.

Q They worked from what time?

A 7:00 to 8:00 on my job.

Q Packing hoses?

A And assembling them.

Q All right. Do they clear their work area before you come in?

A Yes.

Q Or --

A They have cleared the area, and they try to make it seem as though they've never been there.

Q All right. Now -- Well, how could you tell if it was -- You say you couldn't tell if it was your work or theirs. If they cleared their work area how come you couldn't tell that it was your area - I mean your coupling?

A There was no way we could tell if it was mine or theirs.

Q Where did the hoses go with the couplings after you finish the box?

A They go to shipping, opened.

Q Opened?

A Yes.

Q So you don't seal them?

A No; I'm not allowed to any more.

Q Have you ever seen the boxes that Eleanor and Patty worked on?

A No, because they was sealed and taken right to shipping before I got to work.

Q Oh. So you don't -- Oh. So you can't really

tell.

A. No.

42 Q All right. Did he ask Eleanor if it was her coupling?

A. Yes.

Q Did he call Patty Lewis in there?

A. No, he did not.

Q Do you know -- Did you overhear him anytime during the day ask if it was her coupling?

A. No.

Q So in effect both of you denied --

A. That is right.

Q -- that it was yours.

A. That's right.

Q Did he give Eleanor a warning slip?

A. No, he did not.

Q All right. All right. Now, after this first notice did you have another problem with your hoses as far as the boxes and the hoses that you did?

A. Yes, he come back --

Q Well, when was it?

A. I can't tell for sure. It was one morning, about--

Q Well --

A. -- about two weeks later.

Q Okay.

A. About two weeks later.

Q Okay.

43 A And he told me I had left out a hose, a 10' hose,
I was one short in my box.

Q Go on.

A And I told him I couldn't have been one short because we have to count our tags there before assembling our hose, and they have to be tagged before we put the couplings on, so there would have to be -- like these, if there was ten in a box, why, there would have to be ten tags to go with it. And I know I couldn't have made that mistake. And he told me he just wanted me to be careful. And that was all.

Q Okay. He didn't give you a warning notice that time?

A No, he didn't.

Q Okay. Fine. All right. Now, you have a second warning notice. Right?

A That's right.

Q And that has been admitted as General Counsel's Exhibit 4-B.

Now, I'll ask you if that exhibit is the second warning notice you received?

[Document handed to witness.]

A Yes, it is.

BY MR. FROCKT:

Q Okay. What's the date on it?

44

A April 17.

Q All right. Fine. Now, it says carelessness this time. "Violation packed 10 ft. hose in a box marked for 15 ft. hose."

A That's right.

Q And he gave you a 3-day layoff?

A That's right.

Q Okay. Tell us about this. What happened here?

A On April 17th he come to my work area, and told me he wanted me to come with him. Now, he took me over to shipping and he showed me a box with 10' hose in them marked 15', and he asked me if I had run these the day before, and I said yes. And he said all right. And I went back to my work area. And then he come back and got me in a little bit, and he took me over and he told me that he couldn't have two people doing the same job, and that my work was carelessness, and that he couldn't pay Patty and Eleanor to do my work over again and he had to give me a 3-day layoff, and he did, for three days.

Q Now, did you in fact -- Well, was it your work?

A No, I can't prove that it was or it wasn't, because that night when I left my work area I had a 15' box sitting there marked 15, but when I come back in on the following morning the 15' box was not there.

Q And what did you pack that day?

A I packed -- Well, I was packing 15', and he come

45 over and had an order for 10', and I had started to do that, and I had put -- there was two 15' hose in the box, and I had let the box sit there, when I went to the 10-footer, but when I come in the next morning the two 15' hoses was sitting on my work area and the box was gone.

Q Now, had you -- Well, let's just -- Had you ever made a mistake like this before?

A Yeah, but I'd never got any complaints from Mr. Hollander.

Q No. I'm just asking you, had you ever put the wrong hoses in the wrong box?

A No.

Q Before.

A No.

Q To your knowledge.

A Not that I know of.

Q Did Mr. Hollander ever tell you that you had?

A No, he had not.

Q All right. To your knowledge had you ever put three couplings on a hose?

A No, I have not.

Q Did anybody ever mention that you did before the March 20th incident?

A No.

Q Okay. Do you know - to your knowledge did anybody

46 else do that that you have seen during the period of your employment, do either one of those things doing the job you do?

A. No.

Q. I see.

A. It's impossible, because we put these couplings on that you would be looking at both ends, and you would see that dangling there if there was a mistake made like that.

Q. All right.

A. In fact it would it would hit the machine if it was when you were putting them on.

Q. All right. So you were off from, let's see -- So you were off -- You got the notice on the 18th?

A. Yes.

Q. Right? 17th.

A. I believe.

Q. So you were off on Thursday, 18th, Friday, 19th, and Monday, the 22nd?

A. No. I didn't work Wednesday. He give me the notice and sent me home.

Q. Oh, this was in the morning?

A. Yes.

Q. Okay.

A. So he sent me home on Wednesday.

Q. And you came back on the 22nd?

47

A : That's right.

Q Of April.

A Yes.

Q Okay. Now -- Thank you. Now, during that next week did you have a conversation with Mr. Hollander concerning your working conditions?

A Yes.

Q Your time?

A Yes, I did.

Q When was this?

A It was a day or two after I came back.

Q Fine.

A I had eaten my lunch.

Q All right. When did it happen?

A It happened about -- oh, a little after 12:00.

Q All right.

A We eat at 11:30. He waited until we eat, and he was waiting on me with Mary and Mr. Hershey.

Q All right.

A And he said he was getting tired of me quitting early at 11:27, and he was tired of me quitting early in the evening, and he wanted me to quit at 4:30.

Q All right. What time do you quit in the evening?

A 25 after 4:00.

48 Q What time are you allowed to quit in the evening?

A That was always our understanding since I worked there, that we quit at 4:25.

Q What do you do from 4:25 to 4:30?

A We go and wash up.

Q Who's "we"?

A All the employees.

Q Everybody just shuts down at 4:25?

A Yes.

Q How about in the afternoon at 11:30?

A We quit at 11:30 and go in and eat.

Q Had you in fact that day quit at 11:27?

A No, I hadn't.

Q Was your time marked -- Do you have to clock in and out?

A No.

Q Oh, I see. All right. Now, you said Mary Burgher and Hershe was with him.

A That's right.

Q And then in other conversations Lewis, and other people like that. Before the election did Mr. Burgher -- I mean Mr. Hollander always talk to you with witnesses there?

A No.

49

Q All right. During the second period of your employment, this period we're talking about now --

A Uh huh.

Q -- did Mr. Hollander -- Did you always work on the same job?

A Yes, I did.

Q What did you --

A You mean when I went back to work?

Q Yeah. In March. All right. Were you ever transferred to do a different job?

A Yes, I was.

Q All right. How many times were you transferred, how many different jobs did you work on?

A I started in plastics, and then one day he come and got me. He said he had a little job for me.

Q All right. When was this?

A I'm not sure.

Q Well, try to pin it down.

A It was in April, around the 1st of April.

Q Okay.

A When this started.

Q Okay. Fine.

A And he said he had little -- a little job for me, and he took me over in the other department.

Q What department is that?

50

A. It's just the general factory.

Q. Okay.

A. Over in the machine department.

Q. Yeah.

A. And he put me on drills.

Q. Yes. Go ahead.

A. And I would work there.

Q. Well, did you -- had you worked on drills before?

A. No, I never had.

Q. Had anybody taught you how to do the work?

A. No.

Q. Did you want to do this work?

A. I didn't mind.

Q. Okay. You didn't mind the drill.

A. No.

Q. Okay. Now, what else -- Well, you worked on the drill. How long did you work on the drill?

A. Well, I was working on the drill part of the time and then I would go back to plastics and work, fill the orders that he needed, and then I would go back, back and forth.

Q. How long did this go on for, about?

A. I would say about two weeks.

Q. All right. Now, when you were going back and

51 forth did anybody do your job during the day?

A No, they did not.

Q Okay. Now, did in fact you operate the machines at the plant?

A I operated the drill machines.

Q And other than the drill machines did you operate other machines, also?

A He came to me one morning and said he wanted me to learn the elbow machine.

Q All right. Now, when was this?

A I couldn't tell you.

Q All right. You said it was about the first part of April that you went there.

A The last part, the latter part of April, around the 30th April.

Q All right. All right. Fine. Now, tell us what happened. What time of the day was this?

A It was the beginning of the day.

Q All right. Now, in your own words tell us what happened that day.

A Well, I had started at the drill, as I had been told to do, and Mr. Hollander come and asked me to come with him, he wanted me to go over and work the elbow machine. And I told him no, that I just didn't want to do this, I was afraid of it. And he said that he wanted me to

52 learn the elbow machine, and he shut my machine off, and he said, "Come with me".

So I went over to the elbow machine, and he had Barbara working where the long pliers were, and he put me --

Q Where -- just a second -- just a moment. All right. Now, who is Barbara?

A I do not know her last name, sir.

Q How long has she been there?

A She was just a new employee there.

Q All right. Now, you can tell us about the operation of the machine. Well, tell us about the operation of the machine. What is the elbow machine?

A It puts out plastic elbows to fit on the pipe in the plastic department.

Q And what is the machine like to operate, et cetera?

A It's a large machine. You have to use pliers, large pliers to pull them out, and you have to stand firmly on one foot, and then you have to pull it out with the other, brace your foot up on the machine to pull them out. You have to -- well, like this.

Q And how many people work on this machine as far as at one time?

A It can be run by two, but most of the time it is just run by one.

53

Q How do two run it?

A One is in the back and one is in the front.

Q It operates two different -- actually two machines in one?

A That's right.

Q Okay. Now -- All right. Continue. So you -- All right. Well, let me ask you this, when you work on couplings, I mean -- well, what do you -- what did you do originally?

A In the water --

Q Yeah. Putting the couplings on, or putting the sealing on.

A That's right.

Q All right. Now, how do you work at that? Are you seated?

A No.

Q Are you --

A I stand.

MR. PECTOR: Your Honor, some of these questions are leading. I haven't objected, but I think he should stick a little closer.

TRIAL EXAMINER: Is it relevant to go into the operation of this elbow machine?

MR. PROCK: Sure. This elbow machine is important in two separate witnesses. This is probably the

54 key machine in my case.

BY MR. FROCKT:

Q All right. Now, what kind of effort do you have to use, if any, to do the -- to do your vater line job?

A You just stand and walk all day.

Q Okay. Now, about the drill, what type of effort do you need to operate the drill?

A I just stood all day.

Q Well, what do you do with the drill?

A With my hands all day.

Q All right. Now, how about the elbow machine?

A I'd just stand, and I'd have to pull --

TRIAL EXAMINER: Are these power driven machines which you manipulate manually? Do you understand my question?

THE WITNESS: You mean --

TRIAL EXAMINER: Are these machines run by electricity?

THE WITNESS: Yes.

TRIAL EXAMINER: Do they have motors?

THE WITNESS: Yes.

TRIAL EXAMINER: And you have to regulate manually by your own hands--

THE WITNESS: We have to --

TRIAL EXAMINER: -- the speed and the installation

55 of the material, and things of that kind?

THE WITNESS: The drill press we do, yes.

TRIAL EXAMINER: Yes.

THE WITNESS: Yes, sir.

BY MR. FROCKT:

Q How about the elbow machine?

A Well, it was -- You had to use pliers to pull them out because it was on a form, an elbow form, you know, and you had to get hold of them, and it was hot, and you had to pull the machine open out like this, and you had to pull them out, like this, and they would get -- sometimes they would be so hard to pull you'd have to pull almost back into the next machine.

Q All right. Had you ever operated this machine before around April 30th?

A No.

Q All right. So tell us what happened. He took you over there and said he wanted you to run the machine.

A He wanted me to learn to run this machine.

Q All right. Who taught you?

A Mary Burgher taught me, and this Barbara did.

Q All right. Now, tell us what happened that day; how did they go?

A Well, they put me on the small side of it, I don't know the length of them, in the morning so I could

56 learn them. Then Mr. Hollander told Mary to put me on the larger side in the afternoon, which I run all afternoon. And then the following day I come in and they didn't --

Q Well, did anything unusual -- Is that all you can recall about the first day?

A That's all, yes.

Q Okay.

A And then the next day, why, when I come in they put me on the large side again, and I stayed on that all day, and my foot got to hurting me, and I asked Mary around 2:00 o'clock if she would take me off for just an hour.

Q Mary Burgher?

A Uh huh.

Q And who is Mary Burgher?

MR. PROCKT: This is E-u-r-g-h-a-r.

BY MR. PROCKT:

Q Okay. Go ahead. Who is she?

A She was our supervisor in that department.

Q All right. Fine. Now --

MR. PROCKT: I'm not going into that issue any more.

As you might have imagined, Mr. Examiner, we had supervisors issues in the other case, too, but we're not going into that here.

BY MR. PROCKT:

57

Q All right. What happened that day? You asked Mary Burgher to take you off. Go on.

A I asked her if I could possibly get off the machine an hour until I got used to the machine, and then I would go back to it. And she said, well, she didn't have anything to do with it, she'd have to ask Mr. Hollander.

Well --

Q Did you give her any sort of -- What was the reason for asking, if any?

A Because my foot was hurting.

Q Did you relate this to Mary Burgher?

A Yes.

Q Well, tell us what you told Mary Burgher.

TRIAL EXAMINER: She already testified she told her that she wanted one hour's relief because her foot hurt her.

MR. PROCKT: Oh.

TRIAL EXAMINER: We've been over that now twice.

MR. PROCKT: I'm sorry.

BY MR. PROCKT:

Q All right. Continue. What happened that day?

A Well, she said she'd have to go to Mr. Hollander, because she couldn't do anything about it. And about 3:30, why, Mr. Hollander came to the machine and asked me what I wanted.

58 Q All right. What happened?

A And I had asked him -- I said, well, my foot was bothering me, and until I get used to the machine can I be relieved, but by that time it was too late, you know, we'd just be off in 45 minutes, and we'd be going home, and he said, well, he'd see about tomorrow what we could do about it.

Q All right. Now, which foot hurt you?

A My right one.

Q Is there any specific reason why you couldn't operate that machine?

A I had been in a car accident in August of '67, and I had that one injured.

Q Now, how badly was it injured?

A Well, I didn't walk for a while on it.

Q Were you off from work?

A I was off five weeks.

Q To your knowledge did the company know this?

A Yes, they did know it.

Q All right. You came back -- Did you come back to work after you were off?

A Yes, I did.

Q Now, -- All right. That takes us up to I guess about the 1st or the 2nd of May. Now, what happened the next day?

59

A I didn't come to work.

Q Okay. All right. How about the next workday after that?

A I didn't come back. I went to the doctor that day.

Q Okay. How about the next workday after that?

A I come back on the following Monday.

Q Do you recall the date?

A The 6th.

Q Of what?

A Of May.

Q All right. Now, in your own words tell us what happened, as far as your employment.

A I came in that morning at 8:00 o'clock, and I went to Mr. Hollander, and I asked him, I said what was I to do that day. And he said, "Well, you're to go on the elbow machine."

And I said, "Well, I don't want to go on the elbow machine."

And he said, "Well, I don't have any other work." And he said, "Why don't you want to go on the elbow machine?"

And I told him, I said, "If I got sick on there I'm afraid you wouldn't take me off." And usually they start the machine at 7:00 o'clock, that morning it wasn't running, and I was afraid to go on it because I didn't know what maybe

60 they would do to the machine that could have hurt me.

Q Go ahead.

A And so he told me, he said, "Well, I'm sorry, I don't have any other work. And then he looked around, and he said, "Go in the lunchroom."

And then we went in the lunchroom, and he come in and talked to me. He said, no, he didn't have no orders, and he didn't have no work for me, and he would call me when he had some work for me.

And that's all. I clocked out and went home.

Q To your knowledge was there work for you to do besides the elbow machine?

A Yes, sir.

Q Tell us about that.

A Well, when he had first come to get me to go on drills he had given me a slip of paper with all the orders.

Q How long ago was this?

A I don't know for sure.

Q Well, how long, about?

A It was about six or seven days before that. No one had worked on the job before I did.

Q How do you know?

A Because you can tell, because we work in plastic, and dust, and everything, you know, along with boxes. You can

61 tell if anybody works on it.

Q Well --

MR. RECTOR: I object to any further questions.
He's asking for a conclusion here, an opinion.

MR. PROCKT: No, I'm asking for a fact.

TRIAL EXAMINER: Sustained.

On what do you base your conclusion that there was work to be done on matters aside from the elbow machine?

THE WITNESS: Well, I worked in plastics. He had given me quite a long list of orders that he needed, 10' and 15' hoses, and then when he had taken me over on drills this order was not filled. We are required --- He always wanted to keep a hundred boxes of each up in shipping.

TRIAL EXAMINER: In stock?

THE WITNESS: In stock, yes. And this was down to nothing.

TRIAL EXAMINER: Next question.

BY MR. PROCKT:

Q All right. So that takes us to May 6th.

A Uh huh.

Q Did you hear from Mr. Hollander again?

A No, I didn't.

Q Did you ever return to the plant?

A Yes, I did.

Q When was that?

- 62 A. It was May the 16th.
- Q. All right.
- A. I went back to get my check.
- Q. What time?
- A. 4:35.
- Q. And did you go alone?
- A. No, I did not.
- Q. Who went with you?
- A. My father went with me.
- Q. What's your father's name?
- A. Harold Ryan.
- Q. Now, in your own words tell us what happened that day.
- A. We entered the office, the factory by the front door.
- Q. All right.
- A. About 4:35.
- Q. Okay.
- A. And we went into the hall and on into the secretary's office.
- Q. Okay.
- A. And she asked us what we wanted, and I told her, and she called Mr. Hollander, and he walked in, and he seen who it was, and he went back out to the factory. And dad told her, he said what we come for was my check. And she said

63 "Well, who are you?" And he told her.

Q Who's "she"?

A Mr. Hollander's secretary.

Q Who did she say that to?

A She said it to my father.

Q All right.

A And he says, "Well, all we came for was to get Claudine's check". And she got real huffy with him and ordered him out, or she called the police.

Q Go ahead.

A So she went to the phone then and called Mr. Hollander in, and he come back in then.

Q Go ahead.

A And he asked us what we wanted, and we told him we wanted my check. And he kind of got real rough, and talked real rough.

Q Well, just tell us what he said and what he did.

A And he ordered dad out of the factory. He told him to leave. He told him this about four or five times. And in the meantime he had said, he kept repeating he run a respectable business, and he didn't want no nonsense going on there. And dad told her, he said, "Just give her her check and we'll leave".

And he finally went and got my check and put it in his pocket, and then he paraded around a few minutes.

64 Q Where was your father?

A He was standing out - out beside the door.

Q All right. So your father had left.

A Yes, he had.

Q Now --

A But he had left the door open about 4".

Q All right. Now, had your father, to your knowledge, ever been to the plant before?

A No, he had not.

Q Had your father ever, to your knowledge, met Mr. Hollander before?

A No, he had not.

Q Is there any fact which you can state what your -- why Mr. Hollander acted this way towards your father?

MR. RECTOR: Objection. Immaterial and irrelevant.

TRIAL EXAMINER: Sustained.

A He -

BY MR. PROCKT:

Q Wait a minute. Just a second. He sustained.

You testified in the preceding hearing, did you not?

A That's right.

Q And did you take part in union activities before the election?

65 A Yes, I did.

TRIAL EXAMINER: Just a minute, Mr. Frockt. There has been the stipulation she testified on behalf of General Counsel and adversely to the Respondent.

Will Respondent concede that she was also active in the union prior -

MR. RECTOR: Yes.

67

TRIAL EXAMINER: Did he take any part in the union activities?

THE WITNESS: Yes. He called the union, and he made the appointment and the initial setting up for me.

BY MR. FROCKT:

Q All right. So your father is outside, and Mr. Hollander is there with the check in his pocket. Continue from there.

A And he said that he wanted witnesses to prove that he had given me my check. And he had brought some men in from the plant, and his secretary in the office, and --

68

Q Do you know who they were?

A No, I do not, sir.

Q Go ahead.

A And I told him, I said, well -- he said we have plenty of witnesses there. I said, "Well, they're your witnesses, they're not mine. I want my father here for my witness."

And then he went and he asked, he said, "You quit, didn't you?"

I says, "No, I didn't quit."

And he went into the office, and his secretary followed him, and I heard a little giggling going on, I don't know what was going on, but there was no typewriting, or anything like that going on, and he come back and he handed me another notice, and he said, "You know, you're finished here," and he handed me my check, and I left.

TRIAL EXAMINER: What was the date of the notice?

THE WITNESS: May 6th.

BY MR. FROCK:

Q Now, I'll hand you General Counsel's Exhibit 4-C. Is that the notice he handed you on May 16th?

[Document handed to witness.]

A Yes, it is.

BY MR. FROCK:

69 Q And is it the notice -- What is the date of the notice?

TRIAL EXAMINER: She's already testified the date was May 6th.

MR. FROCK: All right.

BY MR. FROCK:

Q All right. Now, did he make any mention whatsoever

on May 6th of this notice?

A No, sir.

MR. PROCKT: Just a second.

All right, Mr. Trial Examiner, will you take notice of Mrs. Tackett's union activities as she testified, and others testified to in the preceding case, or must I go into that?

TRIAL EXAMINER: It's already been stipulated.

FURTHER DIRECT EXAMINATION

70

BY MR. JANETZKE:

Q Mrs. Tackett, you testified you called Mr. Hollander for reinstatement on February 28th?

A Yes.

Q What year was that?

A I beg your pardon?

Q What year was that?

A 1962.

Q Before you were laid off was there ever any complaint concerning your work by Mr. Hollander or any supervisor?

A Not that I know of, sir.

Q Prior to those layoffs was there any complaint about your work?

A No.

Q Now, you testified that he saw you winding by hand when you testified concerning winding the hose by hand.

71 Who is "he"?

A. Mr. Hollander.

Q You also testified concerning General Counsel's Exhibit 2, which are the plant rules. When did you first see those plant rules?

MR. RECTOR: I'm going to object. She's already answered.

TRIAL EXAMINER: Yes. Sustained.

BY MR. JANETZKE:

Q Did you ever see these plant rules prior to January of 1968?

A. No, sir.

MR. RECTOR: Objection.

TRIAL EXAMINER: Sustained.

BY MR. JANETZKE:

Q Now, you testified concerning things going to shipping open.

A. Yes.

Q Were you talking about hoses or --

A. Yes, sir.

Q -- boxes?

A. Hoses. Hoses in boxes.

Q Hoses in boxes.

A. Yes.

Q I wasn't quite clear in your testimony when you

72 were transferred to the elbow machine.

A It was around April the 30th.

Q Of what year?

A 1968.

Q Now, you also -- Now, during your testimony you held up your hands to indicate something about working on the elbow machine.

A These are pliers with large handles.

Q And you were indicating the length of the pliers.

A Yes.

Q And that was about -- how long were you indicating?

A I don't --

MR. PECTOR: Objection.

A [Continued] I don't know how long they are.

TRIAL EXAMINER: Overruled.

Was it a foot long?

THE WITNESS: They could be.

BY MR. JANETZKE:

Q Why did your foot get to hurting you while you were running the elbow machine on the second day?

A Because I had to brace myself with that foot.

73

CROSS-EXAMINATION

BY MR. RECTOR:

* * *

74 Q Good. Now, had you and Mr. Hollander had quite a few talks about the manner in which you were doing your work there even prior to the time you came back?

A No, sir.

75 Q And I believe you testified there hadn't been any complaints on your work.

A Not that I know of, sir.

Q Now, isn't it a fact that this is a small shop and all of you employees are changed around from time to time from one machine to another?

A In the machine department it is, but in plastics we were in a separate part of the factory and we were never taken out of the plastics before and put in the machine department. If we run out of work Mr. Hollander would give us work in the plastic department, if it was running the grinder or sorting plastic, but we were never taken out of plastics and put over into running a machine or anything. That was the duty of the girls over there who know how to do it. And he wanted someone experienced over there that had -- he broke the girls in as they come in in the machine department to run the machines. He wanted them to run them and know all the machines, and I was never over there until after the election, and then, why, he took me over there,

and not before had I ever been over there to do any work over there.

* * *

76 Q Well, when was the last time you were laid off due to lack of work over there?

A We were laid off the day after the election.

Q And how long were you off?

A We were off a week, and then I went back for a week, and then I was laid off until March 12, 1968.

Q All right. Now, that's fine, but where was most of your time spent, in what department, or what were you doing prior to the hearing even in the other case?

A When I first went to work out there I worked in plastics.

Q And where else did you work?

A In plastics.

77 Q You were never taken out of plastics?

A No, because we always have plenty of work over there. When we didn't have the hoses to run, why, we had the grinding, help do the grinding, and then we had -- he bought the plastic, old plastic that was -- it was from milk bottles, and things, and when they come in, why, we would have to go through them and sort them.

* * *

78 Q You were laid off due to lack of work, at least that's what you were told.

A. That's what I was told.

Q. All right.

A. We didn't have no work on the water line, but there was plenty of plastic to sort.

Q. How do you know that?

A. Because Bill Linten had come to me the day before and he said they were getting short of ground up material, and we had got two truckloads in that day to be sorted.

Q. And who is Bill Linten?

A. He was under Bill --

Q. What do you mean under?

A. We took orders from Bill.

Q. Are you saying that you knew they had work for you to do when you were laid off?

A. That's what Bill Linten told us.

79 Q. I'm asking you if you knew they had work for you to do?

A. Yes, because I seen the trucks deliver it.

Q. All right.

A. And I seen the boxes sitting there that had to be sorted.

81 Q. Let's forget that, and let's go up to the day that you were transferred over to the elbow machine. How did

you know there was other work in the plant?

A I was on drills, and there was work sitting around my thing, and the girl went back to working on it, and she put eight boxes out a day, and then when he took me to the elbow machine he brought in a new girl and put on the drill machine.

Q On what drill machine?

A On the jackhandle drill, the holes for the jackhandles.

Q And was that your machine, or would you call it that?

A That was the work I was assigned to at the time that he took me over to the elbow machine.

Q And what girl was working on that machine?

A He hired a new girl to go on the drill machine.

Q When did he hire a new girl?

A The next morning after he put me on the elbow machine.

83 Q Now, then, I believe you testified that you were afraid to go over on this elbow machine that day because you were afraid that somebody had done something to the machine, or something.

A That's right.

Q What were you afraid that might have been done to the machine?

A I didn't know what Mr. Hollander - the way he had acted before, and I've got a family and I've got to -- I'm the only one to raise my family, and if I'd go in there and he could have set that thing up a certain way, and that hot plastic, why I would be -- I didn't know what he had in mind.

Q You mean he hates you that much?

A I didn't know what was going through his mind.

Q Well, do you hate him?

A No, sir.

Q Well, are you afraid of him?

84 A I'm not afraid of him, but I'm afraid of what he would do.

Q Well, how do you know what he would do, I mean --

A I had it in my mind, and I have a family, and that's why I was -- that's why I was protesting, because of my family.

Q All right. Now, you had it in your mind that day that Mr. Hollander may do something to that machine that would injure you or hurt you some way.

A Not that -- He would mess it up. See, he could mess it up to where he could fire me, get me fired or something and say that I had ruined the machine.

Q And that's what --

TRIAL EXAMINER: What you felt was not a personal

injury but a threat to your job.

Q THE WITNESS: That's right.

B5

First there's one other question before I get into that that I would like to ask.

Did you ever tell any of the new employees that Hollander might fire them if they associated with you?

A Well, all the new employees knew it.

Q How did they know?

A Because Mr. Hollander -- some of the people that worked there had told them that.

Q Who had told them that?

A I don't know, sir.

Q Well, I'm going to ask you about a specific incident here. On 4/10, 1968 did you tell Mary Mayer not to associate with you because if she did that Hollander would fire her?

A I don't know the lady, sir.

Q You don't know the lady?

A No, sir.

Q Well, did you ever say that to any lady?

86 A It's been so long, sir, I don't know.

Q Now, isn't it a fact, Mrs. Tackett, that you were going around the plant over there telling people that Hollander would fire anybody that tried to join the union, or any activities on behalf of the union?

A Sir, when I went back I didn't talk to nobody. I was afraid to talk to anybody. And if I talked to any of the old employees, I talked to them on the outside of the plant, because I was afraid, and I wouldn't talk to nobody when I went back out there. I done my work, and I left there, and I tried to stay to myself as much as possible.

Q And is it your testimony, then, that you never told any of these new employees not to associate with you or some of the other union people because Hollander would fire them?

A They knew; they had been told not to talk. If they were caught talking to any of us that they could possibly fire them, be fired.

Q You say they had been told?

A Yes.

Q Who told them?

A One of Mr. Hollander's older employees had told them.

Q Well, who is one of Mr. Hollander's older employees that made this statement?

87

A Hazel Ward.

Q Hazel Ward?

A Yes.

Q Hazel Ward made that statement?

A Yes.

* * *

88 Q Now, isn't it a fact that that day you were working on a hose which required two fittings, one on each end of the hose?

A That's correct.

Q and that you had put fittings one on each end and in the center?

A I didn't do it, no.

Q You didn't do it?

A No. Because if I had done it as I put the couplings on it would have dangled in front of me and I would have seen it.

Q I didn't ask you if you seen it, or you would have seen it. I asked you if he didn't tell you what's what you did when he gave you that warning notice?

A He told me that's what I did.

Q All right.

A But I know I didn't do it.

91 Q Now, then, didn't Hollander ask you why you wouldn't run the machine?

A I told him, I said I was afraid if I'd get sick he wouldn't take me off of it.

Q In other words you said, "I just might get sick and you won't take me off the machine." Is that correct?

92 A No, sir.

Q What?

A No.

Q Isn't that what you said?

A I said I was afraid if I did get sick he wouldn't take me off.

REDIRECT EXAMINATION

100

BY MR. FROCK:

101

Q Now, on May 6th when you came back to work --

A Uh huh.

Q -- after being off two days --

A Uh huh.

Q You stated you don't recall if you called in. Didn't you call in to work?

A I think I did, sir.

Q Well, did Mr. Hollander say anything to you that day about that?

A No, sir, he did not.

Q All right. Now, on May 6th he said -- you said everybody was waiting on their orders.

A Uh huh.

Q When you refused to run the elbow machine.

A That's right.

Q Who did he assign to what machine first? In other words, what was the first assignment he gave?

Everybody was standing around there. Who did he pick out first to give the first assignment to?

A I think he told me that I would work on the elbow machine that day.

MR. FROCKT: All right. That's all.

TRIAL EXAMINER: Did your father have any conversation with Mr. Hollander?

102

THE WITNESS: All he told him was, he said, "Well, we come for her check. We didn't come to cause any trouble."

TRIAL EXAMINER: Is that the only thing he said to him?

THE WITNESS: Close to that, sir. That's about all.

TRIAL EXAMINER: And what did Mr. Hollander reply?

THE WITNESS: Well, he told him, he said -- well, he told dad three or four times, he said he was running a respectable business and he didn't want no nonsense.

103

BY MR. JENNETTE:

Q Were there any girls working in the machine department who were skilled on running the elbow machine when you were placed on that machine the first time?

A Yes, sir.

105

DAVID EUGENE LEFFLER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined, and testified as follows:

TRIAL EXAMINER: Be seated, please.

DIRECT EXAMINATION

BY MR. FROCKT:

Q All right, Mr. Leffler, state your full name for the record.

A David Eugene Leffler.

Q All right. And your address?

A 601 West Norman Avenue, Dayton, Ohio.

Q Now, have you ever worked for Tidee Products?

A I have.

Q When did you begin work?

A About the middle of March, 1968.

Q And are you presently working for the company?

A No, I'm not.

106

Q Why not?

A I was discharged.

Q When was that?

A April 13, 1968.

Q All right. Beginning with when you were employed, how did you happen to be employed by this company?

A I was sent there for an interview by the Ohio

Employment Bureau.

Q Okay. and who did you talk to?

A Mr. Hollander.

Q Okay. What happened?

A He asked me to fill out an application, and asked me to come in to work the next morning.

Q Did you do so?

A I did.

Q Now, directing your attention to the last couple days of your employment --

Well, first of all what did you do there?

A I ran a sander and a finishing mill.

Q Did you ever receive any disciplinary action before this time you were discharged?

A No.

Q Any warning notices?

A Yes.

Q When was that?

107 A Not a written notice, though, no.

Q Oh. Well, what happened?

A Mr. Hollander told me that I should be careful to whom I would talk and to whom I associated with.

Q I'm talking about specifically your work.

A No.

Q Okay. Did anybody say anything about your work?

Did Mr. Hollander ever say anything to you about your work at all?

A. No.

Q. Okay. Now, you started to give a statement about your should be careful about who you associated with.

A. Yes.

Q. When did this happen?

A. On the Friday, the 12th of April.

Q. The 12th of April?

A. Yes.

Q. Okay. Well, what time during the day?

A. I'd say roughly around 2:00 or 3:30 in the afternoon.

Q. All right. And where did the conversation occur?

A. About 10 feet from my machine that I ran at the time.

Q. And what machine is that?

108 A. The finishing mill.

Q. All right. Now, what was --
Was anybody else present?

A. No.

Q. All right. In your own words tell us what was said between you and Mr. Hollander.

A. Well, Mr. Hollander took me aside and asked me

if a couple of the employees was getting buddy-buddy with me.

Q Who did he ask you about?

A Well, he mentioned Pauline Messer and Phyllis Wilson.

Q Did you say he meant or he mentioned?

A He mentioned.

Q Okay. Go ahead.

A And I told him no, they hadn't, but I had made arrangements with Pauline for that evening, for the following evening. And he told me that I should be careful to whom I was talking, or to whom I associated with, because I could get in big trouble, and he wasn't kidding.

Q Well --

A He also said he liked my work, and he expected me to be there a long time.

Q Do you recall anything else he said?

A No.

MR. RECTOR: When did this take place, what date?

TRIAL EXAMINER: April 12th.

MR. RECTOR: April 12.

BY MR. FROCKT:

Q All right. Now, you said that he said that he wasn't kidding. Did he say he wasn't kidding, or was that just a remark that you made?

A. That's what he said.

Q. All right.

A. Mr. Hollander.

Q. Okay. Fine. Did you in fact go out with Pauline Messer then?

A. I did.

Q. That night?

A. Yes, sir.

Q. Did Mr. Hollander ever say anything to you about that?

A. He called me the next morning.

Q. Which was what?

A. Which was April 13th.

Q. Now, do you recall what day of the week was this?

A. Saturday.

Q. Do you normally work Saturdays?

A. No, I do not.

Q. Were you schedule to work that day?

110 A. No.

Q. All right. Go ahead, what happened?

A. Well, he called me up and asked me if I could come over to the shop, he had something to which he wanted to discuss with me. And I told him I could. And I did.

And the first thing he asked me is --

Q. Well, what did you --

What time did you go?

A I left my house roughly 9:30.

Q Okay.

A I got there about 10:00, I guess.

Q So what did you do when you got there?

A Well, I went in and asked him what he wanted, and he --

Q Was anybody else present?

A Yes, sir.

Q Who?

A His two sons.

Q Do you know their names?

A Larry and Joe, I believe.

Q Okay. Where did you have this discussion with him?

A In his office.

Q Go ahead.

111 A Well, he asked me what time that Pauline and I got in because I was so late in getting up. I told him it was none of his business, but if he had to know we went to the show, had a couple drinks, and we got in at 3:00 in the morning.

And then he told me that he had told me Friday that I could get in trouble by -sociating and talking to the wrong people. He asked me if I knew what he meant by

that. And I told him I thought he meant the union sympathizers, I knew they were in the shop. He said he didn't mean that at all, that he meant that some of the women were making forward passes towards the men, especially married men, and trying to blackmail them into doing whatever they wished.

And he told me that my work wasn't efficient, and that he was going to have to let me go.

Q Did you say anything to him?

A Well, I don't him I didn't exactly care to beg, but I needed a job badly. And he had mentioned that Larry told him something that I had supposedly said, like if he - "If you don't like the way I'm doing the job, do it yourself", and I told him that Larry was lying.

He asked Larry if I had said that, and Larry said yes.

And I told him again that Larry was lying, that I had never said anything like that at all.

112 Q Was this before or after he told you that you were discharged?

A This was before.

Q All right. What did he -- Why did he tell you that you were discharged?

A He said my work was inefficient.

Q Did he go into any more detail?

A Yes.

Q What did he say?

A He said that several of the castings, which is the piece that I ran in the finishing mill, several of them was scratched, and he said he couldn't have that because he wasn't making the company any money that way.

And that's about all he said about that.

Q Did you have anything to say about that?

A I told him the scratches that were on there couldn't be helped, at least some of them couldn't. And he told me that my work was inefficient, and he would have to let me go.

Q Well, did he say -- Did you tell him why they couldn't be helped?

A Well, he claimed there were pieces out of the finishing mill --

Q Did you tell him this?

A No. We did not discuss it. He just said they was scratched, and my work was inefficient, and he would have to release me.

Q Then what happened?

A Well, he hem and hawed around by saying he was sorry, all this, and all that, saying he couldn't see any other way to do it since I wasn't making the company any money. And he gave me my check and told me he was sorry

again. And I left.

Q Did anybody ever praise your work?

A Not that I recall. Well, Mr. Hollander did on Friday of April the 12th. He said I was doing good work, and he expected me to be there a long time.

* * *

CROSS-EXAMINATION

BY MR. RECTOR:

Q Mr. Leffler, you say you were hired on March 19th, 1968?

A I said about the middle of March. I don't know exactly what date it was.

Q You don't know.

A No.

Q And I take it you say you were discharged on April 13th, 1968.

114 A That's right.

Q You weren't there quite a month, were you?

A No.

Q Now, when you were hired in, who hired you?

A Mr. Hollander.

Q Didn't he tell you that they have a probationary period there?

A No, he did not.

Q He didn't say anything about a probationary period?

A No, he did not.

115 Q Did you note on the application that you had an impaired hand?

A No.

Q Why didn't you?

A Because my impaired hand has never hindered me in any type of work that I've ever done.

116 Q Now, what was the first job you were put on when you were hired there?

A I was put on the sander.

Q The sander?

A Yes.

Q And who trained you on that?

A I was trained by Mr. Hollander. I was showed by Mr. Hollander how to operate the machine.

Q You were trained by Mr. Hollander?

A I was showed by Mr. Hollander.

Q Who then checked on your operation, or your work after Mr. Hollander showed you what to do?

A Several people.

Q Who?

A Mr. Hollander, his son Larry.

Q Yes.

A And one of the fellows that had been there longer

117 that ran a bolting machine.

Q Who is he?

A I don't know his name, I forget.

Q You don't know his name?

A I forget.

Q Now, the barrel on the polishing machine, did you have any difficulty with that?

A Several times the pieces that were in there flew out; not the castings, the pieces that was used for the polishing process.

Q And then who showed you how to correct that?

A I believe it was Larry.

118 Q All right. Now, what time did you leave work that day, on Friday the 12th?

A At the end of the day; I believe we quit at 4:30.

Q Now, didn't you walk off there and leave that machine running with parts left in the machine?

A I did.

Q Why did you do that?

A Because the machine didn't need to be watched at all times.

119 Q How did you know it didn't need to be watched at all times?

A Mr. Hollender told me it didn't have to be.

Q Hollander told you that?

A That's right.

Q That's exactly why you were fired on the 13th and called in, because you did that, isn't it?

A No, it is not.

Q It is not?

A It is not.

Q When did Hollander tell you you were allowed to leave that machine running with parts in it?

A The day I started running the machine.

Q He told you that way back then, huh?

A Right.

Q Did you ever before that go out and leave that machine running with parts in it?

A I couldn't have. I wasn't running the machine before then.

Q Well, what happened to the machine when you would go away and leave it, have parts in it and leave the machine running?

A Nothing happens. The pieces are tumbled through the polishing process.

Q Well, don't somebody have to take the parts out

120 . of there?

A Yes. But they have to be there for a certain length of time before they're taken out.

Q What I mean, though, doesn't somebody have to take them out? What happens if somebody don't take them out?

A I take them out when the time is right.

Q But you have testified that you walked away and went home and left that machine running with parts in it.

A I was told to do so.

Q Who told you?

A They ran the machine after I was off. I was told to leave the machine running and the boy who was on overtime would take the parts out.

Q Who was the boy?

A The boy that was running the molding machine.

Q Which one?

A I don't know his name.

Q You don't know his name.

A No, I don't.

Q Now, then, the next day, on Saturday, I believe you testified that Mr. Hollander called you --

A That is correct.

Q -- and asked you to come in --

A That is correct.

121 Q -- that he wanted to talk to you.

A That is right.

Q He wanted to talk to you about what you did to this

machine.

A He did not say what he wanted to talk to me about.

REDIRECT EXAMINATION

BY MR. PROCKT:

Q Who runs the molding machine there?

A I don't know his name.

Q Could his name be Adam Campbell?

A Yes, it could.

Q Is that the gentleman you were talking about?

A I believe so.

TRIAL EXAMINER: What's the name of that machine?

I didn't get it.

MR. PROCKT: The molding -

TRIAL EXAMINER: Molding?

MR. PROCKT: That's right.

MR. RECTOR: That is right, and he's correct on the gentleman.

BY MR. PROCKT:

122

MR. RECTOR: It's a die cast machine is what it is.

BY MR. PROCKT:

Q All right. Now, you said that Mr. Campbell was working there overtime. Is that correct?

A That is correct.

Q Do people work overtime at that plant?

A They do.

Q Did you ever work overtime?

A I have.

Q On these machines? All right, who told you to leave the machine that day?

A Which day?

Q Oh, you have left it running --

A There were several days I have done that.

Q Well, which day? On April 12th who told you to leave the machine running?

A I don't remember.

Q You say you've left it running several times?

A Yes.

Q Can you give us a for instance; during what time of the day would you leave it running?

A Well, I leave it running at 4:30 when I go home because it's usually either Adam Campbell or somebody else working over, and Mr. Hollander told me, and other people such as Larry and Adam Campbell have told me to leave the machine running, they would take the last pieces out when they went home, before they went home.

Q How long does it take for the thing to go through the process?

A If I remember correctly, between 20 and 30 minutes.

Q All right. It takes that long?

A Yes.

Q For the process to finish.

A Yes.

Q Before you would have to pull it out.

A Yes.

Q So it's your testimony that you went home at what time normally, what was your quitting time?

A 4:30.

Q So if you weren't synchronized correctly you might have a half hour left over if you didn't use this process. Is that right?

A Pardon?

Q You might have a half hour left over if you didn't use this process. For example if you put a piece in the machine at 4:10, you'd either have to stay late or not put that piece in the machine. Right?

A Wrong.

124 Q Why?

A I don't put just a piece in the machine. Usually there's 60 or 75.

Q Yeah.

A And then one of the boys who was staying over, that I knew ahead of time was staying over would take care of it.

Q Who would tell you ahead of time?

A Well, usually either Mr. Hollander or Adam Campbell would tell me somebody was staying over, and they would take care of the process.

Q All right. By the way, what's wrong with your hand? I didn't notice, but let's see.

A Well, you can't see it actually.

TRIAL EXAMINER: Which hand is it?

THE WITNESS: Both of them.

BY MR. FROCKT:

Q What's wrong with it?

A If I would grab something tight -- give me your hand.-- I can't let go immediately. I get a cramp in my hand.

JOHN A. WEIHER

127

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined, and testified as follows:

HEARING OFFICER: Be seated.

DIRECT EXAMINATION

BY MR. FROCKT:

Q Mr. Weiher, would you state your name?

A John Weiher.

Q And your address, please?

A My home address is 1809 Schroyer Road, Dayton, Ohio.

Q Now, Mr. Weiher, what is your profession?

A I'm an adult parole officer for the State of Ohio.

Q Briefly in just a couple sentences, if possible, explain what you do.

A In what way?

Q Well --

A My job is to supervise men who have come home from the institution.

Q All right. Fine. And how many men do you normally supervise?

128 A It varies.

Q At one time; average.

A Oh, 75 to 80.

Q Okay. And do you at the present time have under your supervision John Haywood?

A Haywood.

129 Q Now, do you recall when John Haywood was hired by Tildee Products?

A I have it, if I may. I have a few notes here, dates, Mr. Examiner.

MR. PROCKT: I tried to establish the fact that he has a lot of men, and --

TRIAL EXAMINER: Are these notes of yours kept in the regular course of your work?

THE WITNESS: This is correct.

TRIAL EXAMINER: And are they made simultaneously at the time that they occur?

THE WITNESS: That is correct.

TRIAL EXAMINER: Proceed.

A. [Continued] I have --

MR. RECTOR: March 15, 1967.

A. [Continued] That is what I have, 3/15/67.

BY MR. FROCKT:

Q. All right. Do you recall having a conversation with Mr. Hollander in June of 1967 concerning Mr. Hayward -- Haywood?

A. On June 14th I had noted that Mr. Hollander called me at my office.

Q. Do you recall what he said during that conversation?

A. He told me that John Haywood was a good worker, he praised his work, and he asked me if we had any more good men like Mr. Haywood that he would offer them employment.

Q. Do you recall getting a call from Mr. Hollander in November, 1967?

A. I did not actually record the actual date of the call. However, I do recall that there was a phone call.

Q. Do you have it noted that there was a phone

call?

A No, I do not.

Q Okay.

A But I have it noted that on the 20th of November I, talked with Mr. Haywood in his home about the problems that had evidently come up in connection with his work.

Q Tell us what you can recall about this phone call.

TRIAL EXAMINER: Who was it that made this call; who was it on the phone?

131

THE WITNESS: This was a voice that identified himself as Mr. Hollander.

BY MR. PROCKT:

Q Did you recognize this man?

A I had never met this man. I just met him today.

Q Well, you had talked to him on the telephone previously.

A Do you realize how many telephone conversations I have?

Q All right. He identified himself to you. What did he tell you?

MR. RECTOR: I'm going to object, sir.

TRIAL EXAMINER: Did you recognize the voice?

THE WITNESS: That, I can't actually say, Mr.

Examiner.

TRIAL EXAMINER: Where did you receive this call?

THE WITNESS: At my office.

TRIAL EXAMINER: I'll reserve ruling on that.

BY MR. FROCKT:

Q Will you tell us what this voice told you?

A As I recall, it was in the form of a complaint about Mr. Haywood's work.

Q Do you recall what type of complaint it was over?

132 A No.

Q How come you don't have it noted?

A If we would note down every phone call that we get during the course of a week's work we would have mountains of paper.

Q Okay.

A I usually keep the notes until I discuss it with the individual, and then I throw the notes away.

Q Okay. Fine. For what reason did you keep these notes on Mr. Hayward?

A We have to record all of our home visits.

Q Oh. Okay. Now, you had a home visit with Hayward in November.

A November 20, yes.

Q Tell us what went on at that time.

A I discussed with John the fact that I had received a call from his employer that he wasn't -- that he had become too much involved in the activities.

Q What kind of activities?

A Whatever kind of activities that caused the complaint.

Q Well, what do you recall about this conversation?

A What I had noted on my FOS sheet, which is a sheet we carry, a manual, is that we discussed union problems, period.

133 Q Okay.

A I can't recall any specific.

Q That's fine. Now, do you recall having a home visit with Hayward in December?

A On 12/21, I believe it is, I had a home visit. Mr. Hayward told me he was laid off until after Christmas.

Q You had a home visit with Mr. Hayward in January?

A 1/5/68.

Q What happened then?

A He told me he was going back to work on the 8th of January.

Q All right. This brings us up to the time that Mr. Hayward was discharged, or constructively discharged, or quit, March.

Now, do you recall the series of incidents which led up to his leaving the company one way or the other?

A. The only thing I can tell you is what I have recorded on this on the 7th of March.

Q. Okay. Fine.

A. I received a phone call from a man who identified himself as Mr. Hollander, and complained about Mr. Haywood's conduct around the plant.

Q. Okay.

134 A. And as I recall, I can't recall his exact words, it was that he was using foul language, and was abusive, and he wouldn't permit it because he had a lot of women working in there.

Q. Okay.

A. Now, upon the evening of 3/7 I visited John at his home and discussed this with him.

Q. Go ahead.

A. On the 8th I received another phone call from --

Q. Do you recall anything about the conversation you had with Mr. Hollander on the 7th, or a voice on the 7th, and the home visit, anything further?

A. Just what I have related.

Q. Okay. Go ahead. Did you -- All right, let me ask you this question: Did you give Mr. Hayward any advice on the 7th?

A I think I recall I asked him if he did it, and he said no, use the foul language.

Q Okay. Did --

A That was abusive..

Q Go ahead.

A On the 8th I received another phone call, I don't recall whether it was Mr. Hollander who called me first or whether it was John Haywood.

Q Yes.

A Again this call came from the plant office, as I recall.

135

Q Go on.

A And I think it was Mr. Hollander who called first.

Q Okay.

A And I don't know what went on between those two gentlemen in the plant, but I asked John if -- I told him rather -- I suggested to him that I wouldn't certainly work at a place where I wasn't welcome. I didn't do anything stronger than that, as I recall.

And he told me that, Mr. Haywood did, that he had worked there, I believe it was 51 weeks, and he had one more week to go and he would like to work that week out to get his vacation.

Then as I recall, Mr. Hollander came on the

phone and I told him that this is what Mr. Haywood wanted, that he would like to finish out a year so he would be entitled to a year's vacation. And as I recall again, Mr. Hollander said, "Well, I'll give him the week if he will resign".

Q Did you talk to Haywood about this after you talked to Hollander?

A I think he did come back on the phone. And I said, "John, he's offered to give you the week if you resign now". And I don't know what went on after that.

136

Q Now, during these phone conversations, this phone conversation on the 8th of March, the phone was never hung up, was it?

A No.

Q There was a 3-way conversation on two phones. In other words you had one --

A My phone and one phone out there.

Q Yeah.

A I would assume they were in the same office.

Q Now, did Mr. Hollander identify himself in this phone call?

A Yes, sir.

Q Was it the same voice that had talked to you before?

A As I remember, it was.

137

FURTHER DIRECT EXAMINATION

BY MR. JANETZKE:

Q Mr. Weiher, isn't it true that as a probation officer you have the authority to pull a man off a job if you feel it's to his best interest even though he is on parole?

A Well, that would depend upon the type of job it is.

Q But you --

A We try not to interfere, if a man is gainfully employed.

Q But you have the final say. Is that not true?

A I suppose if it were a delegation of authority it could be construed that way.

138

TRIAL EXAMINER: Could you impress or enforce the employee to leave the job?

THE WITNESS: I could suggest.

TRIAL EXAMINER: But you don't really --

THE WITNESS: I've never ordered anybody to leave a job unless they were engaged in illegal activity.

TRIAL EXAMINER: You couldn't compel the employer to discharge him either, could you?

THE WITNESS: No, sir.

BY MR. JANETZKE:

Q Did you receive any complaints from any other

persons other than the ones you have testified to concerning Haywood's use of foul language?

A Not as I recall.

MR. JANETZKE: No further questions.

TRIAL EXAMINER: Any cross?

MR. RECTOR: One question.

CROSS-- EXAMINATION

BY MR. RECTOR:

Q During the conversation that you had with Mr. Hollander over the phone did Mr. Hollander ever in any of those conversations ever even mention union activities to you?

A Not exactly, as I recall --

Which phone call are you talking about?

139 Q Either one that you -- any time that you talked to him, did he ever at any time in any of the conversations say anything about the union?

A I don't think so.

REDIRECT EXAMINATION

BY MR. PROCKT:

Q Did you ever notice during your supervision, and you're still supervising Mr. Hayward, any foul language on his part?

A None whatsoever.

MR. RECTOR: Objection.

TRIAL EXAMINER: Mr. Frockt -- sustained -- that is not proper redirect.

MR. PROCKT: Well, I will make a statement on this. I'm sure if Mr. Hollander made the statement to Mr. Weiher, and if his character is going to be brought in, we can have a witness on character, and everything is important.

JOHN HAYWOOD

140

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined, and testified as follows:

TRIAL EXAMINER: Be seated.

DIRECT EXAMINATION

BY MR. PROCKT:

Q All right, give your name.

A John Haywood, 235 Green Street, Dayton, Ohio.

Q Now, there's already been testimony about when you started work. Is that correct?

A Yes, sir.

Q Okay. Now, first of all let's take some of the matters. Did you ever work on the elbow machine?

A I worked on one Sunday afternoon about three hours.

Q Was it shut off after you quit work, or what happened?

A. Yes, sir, it was shut off when we went home that day.

Q. Who is "we"?

141. A. Don Gary, he was a foreman then.

Q. Well, did you take over for some else;

A. Yes. They had one girl that worked on Sunday morning, and she had to go home at 12:00 o'clock, and so I went over and ran it for about three hours, between two and three hours that afternoon.

Q. All right. Okay. There's been testimony concerning your background. That is correct, I assume.

A. Yes.

Q. Now, Weiher testified to a conversation he had with you. He had a notation of that conversation of November 21. Do you recall that conversation?

A. Yes, I do.

Q. All right. Tell us about it.

A. Well, around 6:00 p.m. Mr. Weiher came to see me, and he said he had received a telephone call from Mr. Hollander asking me to pull out of the union, as I was too involved in it. And I told Mr. Weiher that I did join the union, and if they did strike I would go on the picket line with them. And he told me, he said, "John, if you do, watch yourself and don't get into any trouble". He said, "Just stay clear of it."

Q Do you recall those conversations, these other home visits he had with you on those dates?

A Well, he comes to see me quite often.

142 Q Okay. All right. Getting then straight to March the 7th and March the 8th would seem to be the days here, tell us what happened those two days in your own words, telling us what times, who you talked to, et cetera, and give all matters leading up to and including your discharge. Tell us what happened first.

A On March 7th after I arrived home from work, why, Mr. Weiher was at home waiting to see me, and he said he had received a telephone call from Mr. Hollander wanting me to leave from out there, and he said to Mr. Hollander, he says, "What has he done?", and he said, "Well, his work hasn't been too good, and furthermore he lied about me when he was at that trial."

And Mr. Weiher asked him, "Why don't you fire him?"

And he said, "I can't fire him."

And then Mr. Weiher and I was talking, and he said ---

Q This is what Mr. Weiher had told you about that conversation?

A Yes.

Q All right. Go ahead.

A. --- talking about me leaving there, and I said, "Well, I lack one week there to have been there a year," and I said, "I have a week's vacation coming with pay, and after
143 I have that," I said, "I can leave."

And Mr. Weiher said, "That will be best, but," he said, "I will call Mr. Hollander on March 8th and have a talk with him about it."

So that was about all of that conversation.

And on March 8th, around 4:10 p.m. Mr. Hollander came back to the polish machine which I was running and told me I had a telephone call. So I went into the office, and it was Mr. Weiher, my parole officer. He said, "John, I just got through talking to Mr. Hollander, and," he said, "he is willing to give you your week's vacation if you leave now."

And I said, "That will be all right." I said, "I am under your supervision and I will do as you request."

And he said, "Well, I think that would be the best." He said, "I'm afraid Mr. Hollander would write to Columbus and might cause you a lot of trouble later."

So I went into -- after I got through talking to Mr. Weiher I went into Mr. Hollander's office, and Mr. Hollander said, "Well?"

I said, "Mr. Hollander said for me to leave."

He said, "Well, he's your boss; you ought to do what he says." So he said, "I'll have your checks around

5:00 o'clock."

144 So I went on out at 4:30, and about five minutes to 5:00 I returned to the shop, and I went to the hallway leading to the office, and Mr. Hollander came up to me with the checks, and he said, "Here's your check." He said, "You can call it a vacation check or a separation check." And he said, "John, ever where you go," he said, "you should learn to keep your mouth shut".

Then I told him, I said, "Mr. Hollander," I said, "you have a lot of people working for you that's come up and told you a bunch of lies."

And Mr. Hollander started acting like he was starting to get mad, and he said, "Furthermore," he said, "you lied about me on the witness stand."

I said, "Mr. Hollander, I want to thank you for everything", and I walked on out.

Q all right. You heard some of the testimony. Did you ever receive a warning slip of any kind?

A No, I haven't.

Q Did you ever get warned by any supervisor for using profane language?

A No, sir, I never did.

Q Did you ever receive any complaints from any of the women ---

A No, sir.

Q -- that you shouldn't talk to them that way?

A No.

Q Did you in fact use profane language?

145 A I never use it.

Q What would happen to you if you broke parole?

A I would be returned.

FURTHER DIRECT EXAMINATION

BY MR. JANETZKE:

Q Mr. Haywood, when you were hired originally were you informed that there was a probationary period?

A No, I was not, sir.

Q Was there any mention by Mr. Hollander or any other officer of the Tidee Products Company that there was a 90-day probationary period?

A No.

CROSS-EXAMINATION

146

BY MR. RECTOR:

151 Q Now, is it your contention that you were discharged or did you resign?

A I left on the advice of my parole officer.

152 Q Well, what happened the day you left there? Did you go up to the office and say something to Hollander?

A No. As I stated before, I walked in the hallway and Mr. Hollander came towards me with the check.

Q Yeah. And what did you say to him?

A He said to me, he says, "Here's your check."
He says "This is a separation check or a vacation check,
whichever you want to call it".

Q Now, who was present?

A No one.

Q Wasn't Margie, the secretary, present?

A No, sir. For him and I was in the hall alone
there.

Q She wasn't there.

A No.

Q Now, didn't you say, "Okay, I quit", to Mr.
Hollander?

A I told him I was leaving on the advice of my
parole officer.

TRIAL EXAMINER: Did you use the word "quit"?

THE WITNESS: No, sir I didn't.

PAULINE MESSER

153

a witness called by and on behalf of the General Counsel,

154

being first duly sworn, was examined, and testified as
follows:

DIRECT EXAMINATION

BY MR. PROCKT:

Q State your full name.

A Pauline Messer.

Q Now, what's your address?

A. 139 Edgar Avenue, Dayton, Ohio.

Q All right. Now, have you worked for Tiidee Products?

A. Yes, sir, I have.

Q When did you -- How did you happen to become employed there?

A. My girlfriend's sister-in-law who worked there had told me that they needed help, and I was looking for work, so I went over on March 26th, I believe.

TRIAL EXAMINER: What year?

THE WITNESS: 1968.

A. [Continued] Mr. Hollander was not there. I filled out an application. He called my home -- not my home, my mother's home --

BY MR. FROCKT:

Q That night?

A. Yes, sir.

Q All right, go ahead.

155 A. I called back. And he set up an appointment on the 27th. That was the day I started working. I went in his office, and he asked me who recommended the place, and I told him no one that I really knew, that my girlfriend's sister-in-law recommended the place, and I also knew a guard who worked there.

Q Did you state the name of these people?

A No, sir, I did not.

Q You didn't tell him who.

A No.

Q All right, go ahead.

A Then he asked me if I had ever worked in a factory before, and I said no, I hadn't, but I needed a job. And he said, well, if I needed a job that he would put me to work on a 90-day probation period.

I asked him when I could start. He said right at that time. I said, "Well, I'll have to go out and tell my girlfriend not to wait on me. I then went out and told her not to wait, to come back after me at 4:30.

I then went back into his office, and he told me that they had quite a few troublemakers there, and --

Q Wait a minute now. What did he -- You came back to his office. Was anybody else there?

A No, sir.

Q All right. Tell us what he said.

156 A He said, "Well, we have quite a few troublemakers here, and we do not like troublemakers", and I should learn who I should talk to and who I should not talk to.

We then left and we went out into the factory where he introduced me to Mary.

Q Mary who?

A Burgher, I think is her name.

Q Yes.

A And Hazel Ward.

He then told them that I needed to work, and he was going to put me to work, and they should treat me like one of their children.

I received a telephone call, and Mary came at my machine and got me. I followed her into Mr. Hollander's office and --

* * *

157 Q Now, you talked to -- They introduced you to Mary Burgher and Hazel Ward. Right?

A Yes, sir.

Q Now, after that you went to work. Right?

A Yes, sir.

Q All right. Where did you work?

A I worked on the molding machine.

Q All right. Now, you stated something about a telephone call the next week.

A Yes - the same week.

Q The same week.

A Yes.

Q All right. When was this?

A I really don't remember if it was on Monday or Tuesday.

Q Okay. Then what happened?

A I went into the office. I followed Mary into

Mr. Hollander's office, and Mr. Hollander and Mary stayed there until after I got off the telephone. And then Mr. Hollander told me I should not tell anyone in the place, in the factory, out in the shop anything about my business, that they could use it to blackmail me, and I told him I didn't think so because I had never done anything to be blackmailed for.

Q Well, who was the phone call from?

A It was from my case worker. I'm on aid, two dependent children.

Q What is your marital status at this time?

A I'm still separated.

Q Okay. Now, did you make any acquaintances at the plant?

A No.

Q No.

A I stayed mainly to myself.

Q All right. Now, directing your attention to a little bit after you started to work, did anybody say anything to you about any other people there that worked there?

A Yes, sir.

Q Well, when?

A Well, I had lunch with Phyllis Wilson on April 1st, --

Q. Yes.

A. It was hot and I passed the lunch area and Mary Burgher was sitting there and she asked me to sit down with her, and I told her no, I was having lunch with Phyllis. And we went out and had lunch in the car. And I came back in -- well, I went back to my machine, and Mary went over and held a conversation with Mr. Hollander. I don't know what they said. Mr. Hollander and Mary had a conversation. Then Hazel Ward came back to my machine --

Q. Did you overhear the conversation?

A. No, I didn't.

Q. What did you see?

A. I just seen them looking at me and carrying on a conversation.

Q. Okay. Go ahead.

A. Then Hazel went up, and she was talking to Mary, and she came back to my machine, and she stood there and she says, "Parline," she says, "I have been here four years," and she says, "Mr. Hollander likes your work and likes you. Now, I think I should give you some advice, that you should be careful who you're seen talking to and who you're seen associating with."

And I told her I didn't know who to talk to and who not to talk to.

So after that I couldn't talk to them. I never

spoke to any of them. I had lunch with some of the men.

Q Okay. Now, there's been some testimony by Mr. Leffler that you -- Did you in fact have a date with Mr. Leffler?

A Yes, I did.

160 Q Now, do you recall the date?

A Yes. It was April the 12th.

Q Okay. Were you separated at the time?

A Yes, I am.

Q Huh?

A Yes, I was.

Q And did you know his marital status at the time?

A Yes, I did.

Q And what was that?

A He was separated or divorced.

Q Okay. Fine. Where did you work? Where was your machine in the plant?

A It was about the middle of the plant.

Q Did anybody else work around you?

A Yes. Phyllis Wilson worked on the machine right next to mine.

Q How far away were you?

A About four feet, I imagine.

Q Was anyone close to you --

A No.

Q -- physically in the plant?

A No. But on April 12 --

Q Well -- On what?

161 A On April 12 Larry Hollander came over and he draped a canvas or a tarp, whatever you want to call it, over from my machine over to the other machine blocking my view of Phyllis, and he did not say why he did it or anything.

Q On April the 12th?

A Yes, sir.

Q Before that was there any problem between you and Phyllis Wilson?

A No, sir, there was not.

Q He draped a tarpaulin?

A Yes, sir.

Q Had anybody said anything to you that would indicate they wanted you separated?

A No, sir, they did not.

Q Did anybody warn you for any reason about your job?

A No, sir.

Q Or your attitude?

A No, sir.

Q Or anything like that?

A No, sir.

Q All right. To your knowledge was this simply

a precaution?

A Not that I could see. Phyllis' back was towards me all the time.

Q Well, the machines that you all operated, is there any type of flash or spark?

162 A No. There's just an airhose that we cleaned the machine - to clean -- I don't know what they call it, but dust pieces off the machine after the product had dropped down.

Q Yeah.

A Little pieces of plastic.

Q And does it cause any kind of flame, or anything?

A No, sir.

Q Now, when were you discharged?

A On April 18th.

Q Did you sign a union card?

A Yes, I did.

Q All right.

MR. PROCKT: No. 5.

[Whereupon, the document, above referred to, was marked General Counsel's Exhibit No. 5, for identification.]

BY MR. PROCKT:

Q I hand you what's been marked for identification as General Counsel's Exhibit 5.

[Document handed to witness.]

BY MR. FROCKT:

Q What is that?

A That's a union card, and I signed it on April 15th.

163 Q All right. Is that your signature?

A Yes, sir, it is.

Q And that's the date that you signed it?

A Yes, sir.

Q You signed it on April 15th or April 16th?

A April 15th.

Q All right. Who gave you that to sign?

A Who gave me that to sign?

Q Uh huh.

A Claudine Tackett.

Q When did you sign that card?

A On April 15th.

Q Where?

A In the car outside the plant.

Q Now, on April 18th you said you were discharged?

A Yes.

Q Right?

A Yes.

MR. FROCKT: I move to admit that. Did I

already --

TRIAL EXAMINER: You did not.

MR. FROCKT: I move to admit General Counsel's Exhibit 5 for identification.

MR. RECTOR: No objection.

TRIAL EXAMINER: It will be admitted.

164

[Whereupon, the document, heretofore marked General Counsel's Exhibit No. 5, for identification, was received in evidence.]

BY MR. FROCKT:

Q Did you take part in any other union activities?

A Yes, sir. I attended one meeting, April the 8th.

Q What was that about?

A Well, Phyllis asked me if I would attend the meeting to tell Mr. Janetzke about the 90-day trial.

MR. RECTOR: Was that April 8th?

THE WITNESS: Yes, sir.

BY MR. FROCKT:

Q About what?

A About my 90-day probationary period.

Q And that was April, 1968?

A Yes, sir, it was.

Q All right.

MR. RECTOR: April 8th, she said.

MR. FROCKT: April 8th.

BY MR. FROCKT:

Q All right. Now, you signed this card after work on the 15th?

A Yes, sir.

Q On the 16th did anything unusual happen at the plant?

165 A Yes, sir.

Q Tell us in your own words what happened.

A Well, when I came back from my lunch, which was around 1:00 o'clock, Hazel Ward, Mary Burgher and Patty Lewis came to my machine, and Hazel asked me if I recalled the conversation she had with me a couple of weeks earlier, and I said no, not really. I asked her why? And she said she just wanted to have some witnesses.

I said, "Well, witnesses for what?"

And she just said, well, she wanted some witnesses. And she talked on, but I didn't pay any attention to her. I just kept doing my work.

Q Do you know what she was talking about?

A I guess about the conversation that she had with me about being careful who I was seen talking to and associating with.

Q All right, go ahead. What happened next?

A And then they left. Mr. Hollander came over to my machine, and he asked me what all the commotion was. And I told him I really didn't know. He then left, and said he

was going to get to the bottom of it.

He went over and he talked to Connie McGoon, I think that's her name, and he went and got Hazel Ward, Mary Furcher, and then he went, and Patty Lewis, and then he went over and got Claudine Tackatt from her machine. Then he came back to my machine, and waited until I had finished, and then he shut it off, and we went into an open area of the shop. And then he asked Claudine who had told her she couldn't talk to anyone. And Claudine said no one.

And then he said it was someone on the molding machine, and everyone that was there was on the molding machine, meaning myself, and Connie, and Hazel.

Q How many molding machines are there?

A There's just two that was operating.

Q All right, go ahead.

A And then he said, "Did Pauline say that?"

And Claudine said, "No, sir. She has not spoken to me."

And then Hazel spoke up and said, "Well, it certainly wasn't me."

Then Mr. Hollander said something else about me, and I told him to wait a minute, that I have never talked to any of the women employees. And he said, "Well, why not? You're a very good worker."

And then he asked Claudine if Claudine was going

to defend herself, and Claudine said no. And then he asked, he told Claudine, he said, "Well, you really don't care one way or the other?"

And she said, "No, sir, I don't. I just don't want to get anyone into trouble."

167

And after that he told us to go back to our machines.

On the same day I received the letter when I went home from David telling me he had gotten fired for going out with me.

Q. Okay.

MR. FROCKT: Just a second.

BY MR. FROCKT:

Q. That was on April 15th, that meeting?

A. I believe either the 15th or the 16th.

Q. All right. And you were discharged on what date?

A. On the 18th.

Q. Did anything happen that was unusual on the 17th?

A. Yes. Hazel Ward came to my machine and observed my work all day.

Q. Had she ever done this before?

A. No, she had not.

Q. Had anybody ever done it?

A. No, sir.

Q. What do you mean, observed your work? What did

she do?

A She just sat there and watched me work.

Q Okay. What happened the next day?

A The next day I went in to work as usual, and I finished my day, and as I started to leave Mr. Hollander
168 - asked me to wait, that he wanted to talk to me.

Q Okay.

A Everybody was leaving.

Q Go ahead.

A And then I went over, and he handed me my check.

He said he had been watching me and my attitude towards my work, that he didn't think I was going to make it, that he usually gave a 30-day probationary period. And I asked him, I said, "Well, you said I would have 90 days."

He said, well, he just didn't think that I would make it. And he handed me my check, and I thanked him, and I left.

Q Now, what day of the week was that?

A That was on a Thursday.

Q What is your usual payday?

A Friday.

Q What's your normal workweek - Monday through
Friday?

A Yes, sir.

Q 40 hours?

A. Yes, sir.

TRIAL EXAMINER: You weren't paid for a whole week, were you?

THE WITNESS: No, sir.

BY MR. PROCKT:

169 Q Were you ever reprimanded?

A. No, sir, I was not.

Q Were you ever given any written or oral warnings?

A. No, sir.

Q Did anybody ever praise your work?

A. Yes, sir.

Q When?

A. Right after I started. Hazel said I was one of the quickest girls to ever learn to operate the molding machine.

Q All right.

A. And then Mr. Hollander came and told me that Hazel had reported to him that I was one of the quickest girls to learn, and I was a good worker.

Q When was this?

A. Right after I first started working there, the first week. And then he had said it several other times.

CROSS-EXAMINATION

BY MR. RECTOR:

170 Q Now, that tarpaulin was there when you came to work, wasn't it?

A It was not hanging up, across clocking the view, no, sir, it was not.

Q It was not?

171 A It was not.

Q Now, did you or Phyllis Wilson break that tarpaul apart so you could talk to each other?

A No, we did not. We didn't touch it.

Q Well, what happened to it? Did something happen to it that it fell apart?

A I don't know. It was apart there when I went there.

Q All right. Now, then, you also testified that when you started off working there that all of them said you were doing very well and you were learning real fast.

A That's right.

172 Q Isn't it a fact that you started going to lunch period and carrying coffee to the men and not getting back to your work station until 20 minutes?

A No, sir, I did not.

Q You did not.

A No. I did carry coffee to some of the men, but I was on my break at the time that I did that.

Q Well, how long is your break?

A 10 minutes.

Q 10 minutes?

173 A That's right.

Q Well, isn't it a fact that you carried coffee to those men and you didn't get back to your work station until 20 minutes?

A No, sir, I did not.

Q You did not?

A No, sir.

Q Now, then, you met Dave Leffler there in the plant Is that correct?

A Yes, sir.

Q Or did you meet him somewhere else?

A No; I met him there.

Q Now, after you met Mr. Leffler you and Mr. Leffler were leaving your machines and talking to each other quite a bit, too, during working hours, weren't you?

A No, sir. I did not leave my machine. I could not leave my machine until Hazel Ward came to relieve me.

Q Now, let's get to Hazel Ward. Did she train you on that machine?

A She sure did. She showed me how to run it.

Q And didn't she come over and relieve you on that machine?

A Yes, she did.

Q When you went to the restroom?

A Yes, sir.

174 Q And she would relieve you for other purposes, wouldn't she?

A No, she did not.

Q She did not.

A Just for lunch.

Q The last day you were there I believe you testified that she was over there most of the day.

A She was there. She was observing my work, but she did not relieve me.

Q Didn't she run that --

A Except at my break.

Q -- machine that day? Didn't she relieve you at all?

A On my breaks and at lunch.

Q How long were you at breaks?

A 10 minutes, and I had a half hour for lunch

Q Now, did Dave Leffler come over to your machine and talk to you during working hours?

A He did one time. It was on his lunch break, which was separate from mine.

Q Only once?

A That's right.

Q Did anyone ever talk to you about what happened to another machine over close to that tarpaulin when it either fell down or somebody tore it down, or somebody separated it?

175 A. No, sir, they did not.

Q. Nobody said anything to you.

A. It was away from that machine when I first went there.

Q. Now, you have testified that there was nothing on your side of that tarpaulin of a nature that could blow over and harm some other equipment or something. What about the plastic particles?

A. There wasn't -- They wasn't that big, and it wasn't that hard, and she had her back towards me at all times.

Q. What I'm getting at is wasn't there some damage to another machine?

A. Not that I know of.

Q. Because of plastic particles blowing over after that tarpaulin was torn down and they damaged another machine?

A. No, sir, not that I know of.

Q. Well, do you know about any other machine over there?

A. Yes, sir; there was another molding machine on the other side.

Q. Well, do you know anything about the particles from your machine as to whether or not they would damage that other machine?

176

A No, sir, I did not.

Q You don't know that, do you?

A No, sir.

MR. RECTOR: No further questions.

MR. PROCKT: I have a couple.

REDIRECT EXAMINATION

BY MR. PROCKT:

Q You said the tarpaulin was torn apart when you went to work there?

A Yes, sir.

Q Where was the tarpaulin when you went to work there?

A It was just on one side of my machine, and the other side was completely open.

Q In other words -- well, I won't --

And what was the change when Larry came up, what did he do?

A He just came up without saying anything and draped it over to block my view from Phyllis.

Q Oh. At first it was only half, and then the whole thing was.

A Yes.

Q Now, you say -- Do you recall these particulars Mr. Rector was telling you about?

A Yes, sir.

177 Q And you never knew them to do any damage to a machine?

A No, sir, I did not.

Q Did the company ever tell you to wear any kind of protective clothing to protect -ou, your person from these particles?

A No, sir.

Q Did they ever give you an protective eyeglasses or tell you to wear any kind of protector, or any protective eyeglasses?

A No, sir, they did not.

Q So you had no protection at all against these particles, did you?

A No, sir.

Q And they never advised you of it, did they?

A No, sir.

* * *

RECROSS-EXAMINATION

BY MR. RECTOR:

Q These particles we're talking about, were they of a nature that they would damage a person?

A No, sir.

* * *

CLAUDINE TACKETT

* * *

DIRECT EXAMINATION

BY MR. PROCKT:

Q Mrs. Tackett, you were present in the hearing room just a few minutes ago, were you not?

A That's right.

Q Do you recall a conversation, a meeting that Mr. Hollander held in the middle of April with all of the women employees?

A Yes, I do.

180 Q Okay. Now, when was that to the best of your knowledge;

A It was the day before -- It was April the 16th, before I got my 3-day layoff.

Q Okay.

TRIAL EXAMINER: Is this merely corroborative of the last witness?

MR. PROCKT: Correct.

TRIAL EXAMINER: Would you concede she would corroborate the testimony?

MR. PROCKT: I will concede that, sure.

PHYLLIS WILSON

a witness called by and on behalf of the General Counsel,
being first duly sworn, was examined, and testified as follows:

TRIAL EXAMINER: Be seated.

DIRECT EXAMINATION

BY MR. FROCKT:

181 Q Your name, please?

A Phyllis Wilson.

Q When were you first employed by the company?

A November 22nd, 1966.

Q Your address?

A 620 South Smithville Road.

Q Are you married?

A Yes, I am.

Q What is your husband's name?

A James Wilson.

Q All right. Now --

MR. FROCKT: Would the Respondent stipulate that this witness gave testimony in the preceding case, and is a known union adherent?

MR. RECTOR: Well, we would stipulate that she gave testimony in the other case. I don't know what her status is with the union. We will stipulate.

MR. FROCKT: Was a union supporter.

MR. RECTOR: As far as we know she is.

MR. FROCKT: All right.

TRIAL EXAMINER: Well, you've already stipulated that.

MR. RECTOR: She's testified --

TRIAL EXAMINER: She testified she testified on behalf of the General Counsel.

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MR. RECTOR: Yes. She was a witness for the General Counsel in the other case.

TRIAL EXAMINER: And testified --

MR. RECTOR: And testified.

TRIAL EXAMINER: -- adversely to the Respondent.

MR. RECTOR: She was an adverse witness.

MR. JANETZKE: May I make a statement? There's one other factor besides testifying, and that's the extent of the union activity which all these people testified to at the original hearing. I assume the Trial Examiner is going to consider the testimony of their union activity which is fully set forth in the previous transcript.

MR. RECTOR: I don't know what the Trial Examiner is going to do.

TRIAL EXAMINER: Will you concede, Mr. Rector, that they were active in the union?

MR. RECTOR: Yes, I will concede that they were active in the union.

MR. PROCKT: That's enough.

TRIAL EXAMINER: Would you concede the Employer was aware of their activities?

MR. RECTOR: Well, I think the Employer was aware of their activities, yes.

MR. FROCKT: That's fine. Okay.

BY MR. FROCKT:

183

Q Okay. All right. Now, you were on layoff status, were you not, after the election?

A After the election?

Q Yes. Were you laid off after the election?

A Yes.

Q Now, beginning with the hearing you were on layoff status, and had you been recalled?

A I had already been recalled.

Q All right. Now, did you work -- Were you later discharged?

A I was told to get out.

Q All right. I'm sorry. Are you presently working for the company?

A No, I'm not.

Q When was the last day you worked?

A April the 12th.

Q All right. Now, did you work continuously from time time you were -- from the time of the last hearing until April 12th, you weren't laid off or anything?

A No, sir, I wasn't.

Q All right. Now, what was your job before the hearing, what did you work on?

A Assembly, the 123 table.

Q Did you also work at other jobs?

A Before the hearing?

184 Q Uh huh.

A Yes.

Q What?

A Well, I cleaned some after the election.

Q All right. Now, there's been some testimony -- Did you ever work on the drill before the election -- before the hearing?

A No.

Q Did you ever work on the molding machine?

A No.

Q Did you ever work on the elbow machine before the hearing?

A The first hearing or this hearing?

Q The first hearing.

A No.

Q All right. Now, did you -- Have you ever worked on the elbow machine since the last hearing?

A Yes, I have.

Q All right. Now, there's been testimony on the elbow machine, what it is. Now, when did you first work on that machine?

A I would say-- I can't remember the exact date, but it was after the hearing in January, about a couple of

weeks after the hearing.

Q All right. Tell us what happened. How did you
185 come to work on this machine?

A Well, Connie McGoon was on the machine and she was
off sick, and I was asked to learn to run the machine.

Q Who asked you?

A Mr. Hollander.

Q All right. Did you in fact operate the machine?

A Yes, I did.

Q And how long did you operate this machine?

A All day.

Q All right. And how about, was this just a
temporary job or permanent?

A Well, I just understood it to be while Connie
was off sick.

Q All right. Then what happened? When did she come
back?

A The next day she returned.

Q What did you do that day?

A I run the elbow machine for half a day.

Q Just a half a day?

A Yes, sir.

Q Who ran it the other half?

A Connie.

Q All right. How long did this procedure go on for?

A Well, for a few weeks, we rotated back and forth.

186 Q What do you mean, rotate?

A Well, I'd run it in the mornings and she would run it in the afternoon, and then the next day she would run it in the morning and I would run it in the afternoon, so on and so forth.

Q All right. You said you worked on it for about three weeks like this. What happened after that?

A Well, Connie hurt her finger.

Q Yeah. And what happened?

A And I started running the elbow machine all day all by myself.

Q Who told you to do that?

A Mr. Hollander.

Q All right. Was this unusual in any way for you to run it all day?

A Well, not if someone was sick; you would run it all day if you had a person that ran the machine with you and she was sick.

Q To your knowledge did anyone run it for a long period of time without rotation with another employee?

A No.

Q All right. How long did this go on for?

A Well, the rest of the time that I was there.

Q Nobody -- You ran it alone for the rest of the time that you were there?

187 A Yes, I did, except on my 10 minute break in the morning, and my lunch break, and my 10 minute break in the afternoon.

Q Who would relieve you then?

A Well, Mary did sometimes while Connie's finger was hurt.

Q Mary who?

A Burgher.

Q Okay.

A Then I think Patty Lewis did sometimes.

Q All right. Well, did you like doing this job?

A Oh, it wasn't a bad job if you had relief for a half a day, but it was hard work.

Q Did you say anything to anybody about it?

A The only one I said anything to was Mary.

Q All right. Mary Burgher?

A Yes, sir.

Q When did this happen?

A I guess I had been running it about three weeks or a month by myself, something like that.

Q All right. Tell us what happened then?

A Well, I asked Mary why Connie didn't give me relief on it any more, and she said she didn't know. If I had any complaints on it to take them to Mr. Hollander.

Q Well, in relation to the time, was this before or

188 after Connie McGee had hurt her finger and come back?

A Oh, she still worked while her finger was hurt, but she just made the table clamps, but she - after her finger was better, her hand was well, because she had been relieving me for my break at the time.

Q Well, Mary Burgher then said you'd have to see Mr. Hollander. Did you in fact go to see Mr. Hollander?

A No, I did not.

Q Did you continue working on the machine?

A Yes, I did.

Q All right. What action did you take, if any, concerning your work without relief if you didn't go to see Mr. Hollander?

A Well, I just -- What do you mean? I don't understand. What action did I -- I didn't take any.

Q All right.

A I just worked.

189 Q Did you contact anybody else concerning working on the elbow machine?

A Yes, I did.

Q All right. Who did you contact?

A I talked to Mr. Janetzke.

Q And that's the union's attorney?

A Yes, it is.

Q All right. When was this that you talked to

Mr. Janetzke?

A. April 15th.

Q. All right. Tell us what happened between you and Mr. Janetzke that day.

A. He asked me -- That was on Monday, and I didn't go in to work that day because I had decided if I wasn't going to get any relief on that machine I wasn't going to go back in there and work because it was hard, and my legs were about to kill me, and so Mr. Janetzke asked me if I would care to go in and talk to Mr. Hollander and ask for relief. And I said no, that I didn't want to go in by myself. And he said, "Well, would you go with a union representative?" , Creola Reese. And I told him that I would.

Q. All right. Did you in fact do that?

A. Yes, we did.

Q. When was that?

190 A. April 16th.

Q. All right. Tell us in your own words what happened on April 16th.

A. Well, on April 16th we went out to the plant. We were at the plant about ten after 8:00. And his secretary, Mrs. -- we spoke to his secretary and asked if we could see Mr. Hollander.

So she didn't call him over the P.A. system,

she opened the door and she went out into the plant.

Q Who?

A Pardon me?

Q What happened?

A Well, she didn't call him over the P. A. system. She opened the door and went out into the plant to get him. And as he was coming up I heard him holler for Patty.

So he came on in, and he had Mary Burgher - I don't know whether he had Patty or not because I didn't see her. We were standing in the hallway, and they were in the door.

Mrs. Reese told him that she was there on behalf of Phyllis Wilson not getting relief on the elbow machine. And that really set it off.

He started yelling, and everything. I can just remember parts of the conversation because I was pretty nervous at the time.

191 Q Well, tell us what you can remember.

A Well, I remember after she told him that, that she was there on behalf of me running the elbow machine all day without being relieved, he said, "Well, if you have any complaints, you've been told to notify my representative, Harvey Rector."

Q Who did he tell this to?

A Mrs. Reese.

Q All right. Go ahead.

A And I can't remember what else was said after that. But I remember he started yelling. He told her he didn't even know who she was. And she said, "Well, if you don't know who I am why did you come up here to talk to me for?"

Then he started yelling, "Get out of here; get out of here", and I don't know, it was pretty confusing. And she called him a big bully, and she told him that he was nothing but a big boy, that he had to have two women come and stand up for him.

And that's how --- at that time he was screaming, and he threw up his hands like this, to get out, and I was just going outside, and I turned around and Mrs. Reese was still standing there, so I don't know what else she said.

Q Who was Mr. Hollander talking to during this period?

192 A I don't know. He was just --- everything was just confusing. He was just shouting to get out.

Q Did he say anything specific to you?

A No.

Q Did he tell Mrs. Reese to get out specifically?

A No. He was just yelling "Get out".

TRIAL EXAMINER: Was he addressing that to all of you?

THE WITNESS: There was so much confusion; he was just yelling, "Get out". I know that. And so that's what we did, we got out.

MR. JANETZKE: I think the record should reflect that the witness was throwing her hands up about shoulder height when she was saying that he said to get out.

MR. RECTOR: I think the record will speak for itself.

MR. JANETZKE: No, the record doesn't speak for that. That's my point.

TRIAL EXAMINER: Then it's up to the individual doing the questioning to make that indication on the record.

Next question.

BY MR. PROCKT:

Q All right. Did you say anything during this conversation to Mr. Hollander?

A Did I say anything?

Q Yes.

A No, I didn't.

Q Where were you standing in relation to Mr. Hollander and Mrs. Reese?

A Where was I standing, there in the building.

Q Well, where were you - behind Mrs. Reese, in front of Mrs. Reese?

A I don't know. I think I was standing beside her.

Q All right. And you state you can't recall the conversation. Is that right?

A That's right.

Q Why not?

A Because I was nervous, and he was shouting and hollering, and everything.

Q Why were you nervous?

A Well, because he was mad, and he was shouting, and screaming, and throwing his hands and screaming.

Q All right. Now, what did you and Mrs. Reese do after you left?

A We went out to the car.

Q All right.

A And we came down to see Mr. Janetzke on Office Park Drive.

Q Tell us about that.

194

A Well, we told Mr. Janetzke about what happened, and that Mr. Hollander told us to consult Mr. Rector. And Mr. Janetzke called Mr. Rector while we were there, and he talked to him.

Q Then what happened?

A After the conversation or during the conversation, I can't remember which, Mr. Janetzke had asked me if I had gotten into an argument and pushed one of the employees in the plant.

Q What did you tell him?

A Pardon me?

Q What did you tell Mr. Janetzke?

A I told him no, that I had not.

Q Had you in fact ever gotten into a physical argument with anybody at the plant?

A No, I have not.

Q Did you ever get into anything that resembled an argument that he was talking about?

A Well, the only thing I could think of was after I had been off and I came back to work one day.

Q When was that?

A April the 8th.

Q Go ahead, what happened?

195 A Well, Mr. Hollander called me over, and he was telling me -- he was with Mary Burgher and he was showing me some couplings, and he picked one of them out of the barrel and he handed it to me and he asked me to look at it and see, tell him what was the matter with it. I told him it had a crack in it. And he said -- well, he asked me why I ran it that way. And I told him that I had gave one to Connie McGoon to take to Mary Burgher and tell her that they were cracked, and Connie took one over and she came back and she told me that Mary said they weren't too bad, and to go ahead and run them. So I ran them for about half an

hour, and I told her - I called Connie McGoon over again to take it to Mary and tell her that I thought it was too bad to run, and that I didn't want to run it, and I thought she should come over and fix the machine.

And so Mary came over and adjusted the machine. And Mr. Hollander -- I told him about this, I told Mr. Hollander about this, and Mary said, "Well, didn't I come over to the machine and fix it?"

And I said, "Yes, after I had sent for you twice."

And then she threw up her hands and put her finger in my face to say something, I can't remember what she said, and Mr. Hollander pushed her hand back down on the table and told her not to get upset.

Q Who was that?

A Who was what?

196

Q Who?

A Who had her finger up? Mary Burgher had her finger up, and Mr. Hollander pushed her hand back down on the table and told her not to get upset.

A [Continued] At the time that was the only thing I could think of that he was accusing me of.

Q Okay. We got you through your conversation with Mr. Janetzke on the 16th.

Now, did Mr. Janetzke say anything to you further

about that telephone conversation?

A I can't remember.

Q You can't recall anything else that was said?

A No.

Q Did Mr. Janetzke ask you anything about being absent?

197 A Oh, yeah.

Q Tell us about that.

Q Now, you've heard testimony from Pauline Messer. You were in the hearing room, were you not -- about a tarpaulin?

A Yes, sir.

Q Did Larry -- Tell us what happened about that. Just tell us what he did.

A He just came back in the afternoon and he draped the tarpaulin all the way over the back on top of another machine and tied it together and put it up.

Q Who was that?

A Larry Hollander.

Q What's the day he did that?

A April 12th.

Q The last full day you worked?

A That's right.

TRIAL EXAMINER: That's the day you are alleging

198 she was discharged?

MR. FROCKT: No; no; but we'll get to this.

BY MR. FROCKT:

Q All right. You have stated you worked the 12th.

A Uh huh.

Q That was a Friday.

A Uh huh.

Q You went to see Mr. Janetzke--

A Uh huh.

Q -- on the 13th, and on the 16th you went to see Mr. Hollander.

A That's right.

Q Okay.

A Yes.

Q What happened on the 17th, anything? When was the next time you saw Mr. Hollander?

A On the 16th.

Q After the 16th.

A On the 19th. It was on the 19th.

Q All right.

A On Friday.

Q All right. Now, you were absent, then from work on the 15th.

A Right.

Q Did you notify the company?

199 A : No, I didn't.

Q On the 15th when you did not notify the company had you been absent before without notifying the company?

A Yes, I have.

Q Why don't you notify the company, or why didn't you notify the company?

A Because I was sick and I didn't feel like notifying them.

Q Did anyone ever say anything to you about notifying the company before for short absences?

A Oh, we were told if we didn't call in within three days that it was an automatic quit, but never for just one day.

Q All right. Now, when is the next time you went back to the plant.

A After the 12th?

Q After the 16th?

A The 19th, April 19th.

Q Now --

TRIAL EXAMINER: Did you go back on the 16th?

THE WITNESS: No, sir.

TRIAL EXAMINER: You didn't work on the 16th --

or on the 15th?

THE WITNESS: No, sir -- oh, yes, I went on the --

I didn't work on the 15th, but I went to the plant on the

200 16th with Mrs. Reese.

BY MR. FROCKT:

Q Why didn't you go back to work on the 17th?

A Because.

Q Because what?

A Because I wouldn't go back in there and work for him.

Q Why?

A Well, because.

Q Just tell me just why didn't you go to work on the 17th?

A Because I wasn't going back in there and be harrassed any more and have to work like that for the money that I made.

Q All right. What happened on the 18th? You didn't go back to work -- You went on -- Why did you go back on Friday the 19th?

A To get my check.

Q Did you go alone?

A [No response.]

Q Did you go alone?

A No, I didn't.

Q Who went with you?

A My husband went to get my check.

Q All right. Tell us what happened that day.

201 A Well, he went in to get my check because he had called Mr. Hollander earlier to see if he could pick it up, and he said yes. And so he went in to get it. And he was in there for a while. He came back out to the car, and he says that Mr. Hollander wanted to straighten some things out with me, and for me to come on in, that he wouldn't bite me.

So we went into the plant.

Q All right, go ahead.

TRIAL EXAMINER: Did you see Mr. Hollander?

THE WITNESS: Yes, I did.

BY MR. FROCK:

Q Did you go in?

TRIAL EXAMINER: Did you have a conversation?

THE WITNESS: Yes.

TRIAL EXAMINER: What was said by each of you?

THE WITNESS: Well, he said he wanted one thing understood, that when he said for us to get out that day that he wasn't talking to me, he was talking to that thing that I was with; and that if he was my husband that he would be careful of who he let me associate with, and that he wouldn't be seen with Mrs. Reese, and that she was as low as dirt, and even her own kind wouldn't associate with her.

And there was just a lot of things that were said. I can't remember all of them. I can only recall some

202 of the things.

TRIAL EXAMINER: What did you say?

THE WITNESS: I said I came out there with her because I didn't want to come by myself. And he was yelling at us, and he did tell us to get out.

TRIAL EXAMINER: Next question.

BY MR. FROCKT:

Q All right --

MR. FROCKT: Just a second.

BY MR. FROCKT:

Q All right. So what else can you recall, anything, about the conversation?

A One period of time Joe came in, and I wasn't talking to Mr. Hollander, my husband was. I talked to Joe for a little while, and he told me that Mrs. Reese knew that she shouldn't come out there with me, that she had been told that they wouldn't talk to her, and that they were to contact Mr. Rector, and that she was -- the union was only using me, and they wanted me to get fired so they could have more grounds, but he didn't say what kind of grounds.

And he asked me why I didn't come in and talk to Mr. Hollander myself. And I told him, "Well, because of this", and I was referring to Mary and Patty and all the other people that he had to have standing around there with him, and I asked him why his dad did this, and he said,

203 "Well, in case anything is used against him at the trial that he would have witnesses".

And I said, "Well, I wouldn't have any witnesses, because I couldn't trust any of them."

And then I asked Mr. Hollander about what was this about me pushing an employee into a machine. And he said well, I had pushed Connie into the machine, and I told him that I had not, and that she was a liar, and if she told me I would stop her. And he jumped up and started shaking his finger, and he said, Well, I wasn't going to stop anybody.

And then my husband, he says, well, you know, he told him that - well, he didn't like him talking to his wife like that. And Mr. Hollander said he didn't care what he thought, you know, that's the only thing he came there for was to cause trouble anyway, and it was none of his concern, and that he thought he had better call Connie in.

Q So what happened?

A They went out and they called Connie in.

Q What happened after that?

A Mr. Hollander asked, he says, "Well, didn't Phyllis last week, didn't she nudge you?"

Connie said, "Yes."

He said, "Well, where did you have your hands?"

She said, "In the machine."

204

And he said, "Well, didn't you think this was a very dangerous act on her part?"

And Connie said, "Yes."

And I told him that I did not push Connie.

Q All right. What happened after that?

A Well, he told me that what made Connie mad about it was that she thought I did it on accident, but after that that I had walked over and I supposedly was coming back from my break when I did it and he told me that what made Connie mad was that I walked back over to Sharon Jones and was laughing and talking to her about it.

Q What happened after that? How long were you all in there?

A An hour.

Q AN hour?

A An hour, to pick up my check.

Q Well - And where during this conversation did Mr. Hollander say he hadn't fired you but since you hadn't called in it was an automatic quit? Which part of the conversation?

A When we first came in.

Q So you were there an hour after that talking?

A Yes.

Q All right.

A He said --

205

Q Go ahead.

A When he told me that he wanted it understood that he didn't tell me to get out, but since I hadn't come in or called in for a week that that was an automatic quit anyway.

Q All right. Now, what happened, go ahead, continue with what went on with the things.

A I can't remember it all in order.

Then something was said, he told me I had gotten mad because Larry had put up the tarpaulin, and he said, well, that was only for my own protection. And I told him that it was never that way before, and that's when he told me it was for my own protection, that the flash flew around, and all that.

And he said but the reason I got mad was because of this, because I couldn't work by myself, and I always had to have someone to talk to.

And then I says that Larry and Hazel thought it was pretty funny because after that she went up -- Larry went back and was laughing and talking about it with Hazel.

And he says, "Well, how do you know what they was laughing about?"

And I says, "Well, I don't, but how did you know that's what Sharon and I was laughing about", referring to when he said I went and was laughing with Sharon about nudging

206 Connie.

Q All right.

A I can't rea-ly --

Q Well, can you remember anything else of that conversation?

A Oh, yeah. Well, he told me that I wasn't the only -- about the elbow machine, he told me that I wasn't the only girl that had run it all day, that there were other people there that had run it all day by themselves. He said, "Haven't you run it by yourself, Mary?" and "Haven't you run it by yourself, Patty?", and they said yes.

I said, "Well, it's hard work, isn't it, Patty?", and she just hung her head. She didn't say anything. And I waited for a reply, and she didn't say anything. I said, "Well, you know it's hard work anyway."

Q What else do you remember about this hour long conversation? You've only given us about fifteen minutes of it.

A Well, there was so much I can't remember.

Q All right.

A And it's been five months.

Q Okay. Now, what happened at the end of the conversation, what happened?

A Well, he asked me twice if I was coming back to work, and I told him -- my husband -- the first time he

207 asked me that my husband told him, no, I wasn't coming back for any more harrassment. And he said -- he said, "Well, I don't think I've been harrassing you. How have I been harrassing you?"

And I said, "Well, for instance like when I was off from work, you came back to my machine and you asked me why I was off", and I told him, I said, "I don't know, I didn't feel well, I guess I had the flu."

He said, "I thought only babies got the flu." And he said, "Well, what about what you said about me at the trial, and that I was acting juvenile?"

Q Go ahead.

A And then at one time, I can't remember what part of the conversation --

Q Then what did you say to that, when he said that?

A I said, "Oh, I think you're acting very juvenile about the whole thing."

Q Did you make such a statement at the previous trial?

A Yes, I did.

Q Now, let's see if I got it straight. Is it your testimony that --

TRIAL EXAMINER: There's no need to repeat the testimony. It's in the record already.

208 BY MR. FROCKT:

Q Now, about these two times when you were -- when Mr. Hollander told you at the end of the conversation, when he asked you when you were coming back to work, you said the first time your husband told him that you weren't going to come back for any more harrassment.

Now, when he said this the second time what happened the second time?

A I don't know. I think that's -- I can't remember. But I know he said it two times, a couple times.

TRIAL EXAMINER: Did you personally answer him that you were not coming back to work?

THE WITNESS: I don't remember. Me or my husband did.

TRIAL EXAMINER: One of you did?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Did you leave then?

209 THE WITNESS: Yes.

FURTHER DIRECT EXAMINATION

BY MR. JANETZKE:

Q When you were hired, Mrs. Wilson, were you told anything about there being a 90-day probationary period?

A No, sir.

Q Did you ever see any notice posted in the plant to the effect that there was a 90-day probationary period

prior to January, the previous hearing?

A No, sir.

Q Has your rate of pay changed since the hearing in January, during the period when you were working?

A No, sir.

CROSS-EXAMINATION

BY MR. RECTOR :

210 Q You didn't want to go ack to work over there even after that hearing, did you?

A I sure did.

211 Q Now, has Mr. Hollander issued you any warning notices at all over there since you went back to work after the hearing?

A No, sir.

Q You never got a warning notice?

A No, sir.

212 Q Have you had any words with Hollander, or anything?

A What do you mean by words?

Q Oh, let's say sarcastic words, or arguments, or anything.

A Which one - both of us?

Q With Hollander.

A While I worked there, is that what you mean?

Q Yes.

A. No. Any arguments, no.

Q. Now, I believe you said you were working on this -- what was it, was it the elbow machine --

A. Yes.

Q. -- when you went down to see Mr. Janetzke?

A. That's right.

Q. Well, that was -- when was that - April 12th?

A. No.

Q. Do you remember the date?

A. That I went to see Mr. Janetzke?

Q. What?

A. The day that I went to see Mr. Janetzke?

Q. Yeah.

A. I went to see him April 16th.

Q. Was that April 16th when you went to see him?

A. I talked to him on the phone, but I went to see him April 16th after I had gone to the shop to see Mr. Hollander.

Q. I see. Now, then, I believe you testified that before you called Mr. Janetzke, and before you even had a meeting with Mr. Janetzke that you said you didn't go in and tell Hollander what your grievances were about working on this machine.

A. That's right.

Q. Why didn't you go in and tell Hollander?

A Because I didn't want to -- I knew he'd bring half the shop in with him when I did.

Q You knew what?

A I knew he would bring half the shop in with him when I did.

Q How did you know that?

A Because he always did.

Q What do you mean, he always did?

A After the hearing, every time you'd talk to him he had about three or four employees standing around.

Q You mean when he talked to a group of you?

A No. I mean when he talked to one individual.

215 Q That the company was not bargaining with the union, and that Mr. Janetzke had been informed that anything coming up he could contact me?

A No, I had not been informed.

Q Well you testified that Hollander told Mrs. Reese that when you came over there with her.

A That's right. That's when I came over there with her. That's when I found out about it.

Q Oh. You didn't know it before then.

A No, I did not.

Q No one in the union had told you.

A No, sir, they had not.

220

TRIAL EXAMINER: On the 19th he told you to get out?

THE WITNESS: No. That was on the 16th.

TRIAL EXAMINER: Did he say to you that you were fired on the 19th?

THE WITNESS: No. He didn't tell me I was fired, but he told me since I hadn't called in for three days, or hadn't called in for a week that it was an automatic quit anyway.

221

MR. FROCKT: I have James Wilson, her husband, to corroborate the 19th. If Mr. Rector wants to stipulate that this man would corroborate her testimony, I'll be glad to pass on to the next witness.

MR. RECTOR: I don't have anything to do with --

TRIAL EXAMINER: Will you stipulate he would corroborate his wife's testimony? That's the question put to you.

MR. RECTOR: I don't know what he would do, but I presume he would.

MR. FROCKT: I call James Wilson.

222

TRIAL EXAMINER: Do you stipulate?

MR. RECTOR: All right, I'll stipulate. I don't think it's that important.

BILL WELLS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined, and testified as follows:

TRIAL EXAMINER: Be seated.

DIRECT EXAMINATION

BY MR. FROCKT:

Q Mr. Wells, would you state your full name and address?

A Bill Wells, 2441 Pandora.

Q Now, talk loud.

you?
You testified in the previous hearing here, didn't

A Yes, sir, I did.

Q Where are you presently working?

223 A Tiidee Products.

Q Now, beginning with the facts that you know, after the first hearing, in other words the first trial back in January --

A Yes.

MR. RECTOR: We will stipulate to that.

MR. FROCKT: Okay.

BY MR. FROCKT:

Q Now, when is the -- Directing your attention to that time, after that did Mr. Hollander ever talk to you about the union?

A Well, he never come out and mentioned the union, no.

Q Well, when did he talk to you about this problem generally?

TRIAL EXAMINER: What problem?

BY MR. FROCKT:

Q Well, about ---

MR. RECTOR: That's what I'd like to know.

BY MR. FROCKT:

Q Did Mr. Hollander ever talk to you about your

future at the plant?

A Well, he come back to where I was running the hydraulic press --

TRIAL EXAMINER: When?

224 BY MR. FROUNT:

Q When was this?

A This was just after the hearing, at the first hearing.

Q How long after the hearing?

A Oh, it wasn't too long.

Q Well, how not too long?

A I'd say about three weeks, I guess.

Q Okay. Fine. Now, where were you?

A I was at the hydraulic press.

Q All right. What happened?

A He said, he asked me, he said, "Bill, he said, "have you been asking who's been working around here after quitting time?"

I said, "No, I haven't."

He said -- I said, "Who said I had?"

He said, "Well," he said --

I said, "It ain't nothing to me who works."

He said, "Before quitting time or after."

I said, "No."

So he said, "Well, your work is done."

I said, I asked him then, I said, "Well, my wages is lower than anybody else's in here."

225 He said, "Well," he says, "I'll tell you," he says, "some of this work is different, and some is pretty dirty, and we pay people to work who we think is best qualified for the work, for the job."

And I said, "Well," I said, "I think I've done about everything in here."

And he said, "Well," he says, "I think there's some work here you couldn't do."

I said, "For instance, what?"

He said, "Well, I don't think you could run a die casting machine. I don't think you could run the forklift like these other fellows do."

I said, "I haven't run the forklift."

He said, "Well," he said - then he told me, he said, "Well," he said, "you have been kind of hiding around, too."

And I said, "Who said I hid?"

He said, "Well --

TRIAL EXAMINER: What do you mean, hid?

THE WITNESS: Well, he meant I had been shirking on the job.

A. [Continued] So I said, "Well," I said --

He said -- I think -- He asked me -- And then

he said, "Do you think you can compare with Scarpelli?"

BY MR. PROCKT:

Q Who's Scarpelli?

A Scarpelli. I said, "Why don't you?"

226

He's another man out there. He's a toolmaker.

Q Okay. Go ahead.

A I said, "No, I don't."

He said, "Do you think you could set a die as quick as Ed does?"

I said, "I think I could."

So he said, "Well," he said, "I don't think so."

So he said -- "Well," he says, he said to me, he says, "Well," he says, "Here's one that ain't cut your throat." He called Larry's name. And he called a name and said, "Here's one that ain't cut your throat."

Q Go ahead.

A And I said, "Well," I said, "I don't want to cut your throat."

He said, "No," he said, "because when you cut my throat you're cutting your own throat."

So he walked away with that.

TRIAL EXAMINER: Was that the end of the conversation?

THE WITNESS: On that, yes, sir.

BY MR. PROCKT:

Q Had he ever talked this way to you before?

A No, he never had.

Q Had he ever raised his voice to you before?

A No, he never had.

229

Q You said you had a conversation three weeks after the trial, the other trial, the conversation that you just related to us. Now, the following week did you have another conversation with Mr. Hollander?

A Yes, sir, the following week.

Q When was that as far as -- what day? How long later - two, three, four, five?

A Just one week.

Q Allright.

A One week.

Q Where was this conversation?

A Well, he called me in the office and said --
Mr. Hollander called me in the office and asked me why I

230 made two different statements during the other hearing.

Q Now, what time of the day was this?

A I'd say it was around 3:00 o'clock.

Q Was anybody else there?

A No. Wait - I believe it was earlier. I believe it was around 1:00 o'clock, the best I remember.

Q And was anybody else there?

A He called in three witnesses.

Q Who?

A Mary Burgher, and the office woman, and the boy that was in the office.

Q Okay. Now, tell us what was said.

A He said, "You swore to tell the truth, didn't you?"

I said, "Yes."

And then he asked me why I made two different statements. He said that I told the court that I couldn't work until this hearing was over, and I told Mr. - his attorney that I couldn't work until this thing was over with. So he said that was two different meanings. And he said, he asked me then, he said, "How come you to come back down there?"

I said, "Well, it's a public hearing. I guess anyone can come that wants to."

TRIAL EXAMINER: You mean the hearing here?

231

THE WITNESS: Yes.

A. [Continued] The next day I went out to work, and he said we couldn't work until the hearing was over.

BY MR. FROCKT:

Q You testified the first day of the hearing?

A That's right.

Q And then you went back to work?

A That's right.

Q And the plant wasn't open that day?

MR. RECTOR: I'm going to object.

MR. FROCKT: We're not --

MR. RECTOR: That testimony appears in the record of the other case, the day that he went in there and came back here. And then Mr. Janetzke opened an entirely new case on it under an 8(a)(4). That testimony is contained in that record.

MR. FROCKT: I'm not bringing that up.

BY MR. FROCKT:

Q What else was said? What else was said?

A He said, he asked me who I saw when I came back down here.

And I told him I saw you first. And then he asked me who else.

Q You saw who first?

A You.

232

Q Me?

A Yeah.

Q That's General Counsel?

A Yeah.

Q Go ahead.

MR. RECTOR: What day was this that he was down here?

MR. FROCKT: That's what I was trying to establish, Mr. Rector, when you interrupted me. If you would have let me I could have established all of that.

MR. RECTOR: Well, proceed. I withdraw that I said.

MR. FROCKT: Thank you. Thank you.

BY MR. FROCKT:

Q Now, what happened on the day of the hearing? Now, let's get what happened. You testified the first day. Right?

A That's right.

Q What happened the second day?

A I went to work, and he said he wasn't going to let any of us work until this was over with.

Q Then you came back down to the hearing room. Right?

A Right.

Q Then what happened?

233

A. Well, I met you first.

Q. All right. You talked to me.

A. Yeah. Then I met the other gentleman.

Q. You talked to him?

A. The other man, Mr. Janetzke.

Q. That's right.

A. Yes.

Q. Then we put you back on the stand and you told us what happened that day.

A. That's right.

Q. That's right.

A. Yes.

Q. That was already litigated, and then it was finished.

A. Yes.

Q. Okay.

A. Yes.

Q. Just what happened during the trial.

A. That's right.

Q. Now, what -- now, getting back to the conversation, what happened -- what else was said?

TRIAL EXAMINER: This is the conversation he had--

MR. FROCKT: This is the conversation he had with Mr. Hollander.

TRIAL EXAMINER: About three weeks after the

234 conclusion of the other hearing. Is that correct?

THE WITNESS: Yes. Something, the best I can remember.

TRIAL EXAMINER: All right.

MR. PROCKT: That was a week after the three weeks.

BY MR. PROCKT:

Q Go ahead.

MR. RECTOR: I believe he stated Hollander asked him at that time why he testified two different ways on the witness stand.

BY MR. PROCKT:

Q What else was said?

A Well, he asked me why I come back down here. And I told him it was a public hearing, and I thought anybody could come in that wanted to. And he wanted to know who was the first one who I seen. So I told him. And he wanted to know what you said. And I said you didn't say nothing. And he wanted to know what Mr. Janetzke said. I said, "Well, he didn't say anything either." I said, "Well, he told me he'd put me back on the stand."

He said, well, he said, "You know what," he says, "I don't think you're telling me all of it." He says, "I don't think you're coming clean with me."

So I said, "What part do you think I'm leaving

235 out?" I said, "What is it that you think I'm not coming clean with?"

He said, "Well, I just don't think you're telling me the straight facts about it."

Q Yeah.

A And so he said -- well, the best I remember he said, "Well," he said, "I'm not going to come to you any more. The next time you'll come to me," and he said, "and you can go on back to work."

TRIAL EXAMINER: Was that the end of the conversation?

THE WITNESS: That was the end of that conversation.

BY MR. FROCKT:

Q Now, did you receive a warning notice?

A I did.

Q You had never submitted that warning notice. Do you have it with you today?

MR. RECTOR: We'll stipulate that he received one.

THE WITNESS: Oh, he's got it.

TRIAL EXAMINER: Can you stipulate --

MR. FROCKT: Well, I'm still interested --

TRIAL EXAMINER: Is there a need to introduce the warning notice?

236

MR. FROCKT: This is an allegation in the complaint, all of these warning notices allege an allegation of 8(a)(5).

TRIAL EXAMINER: The Respondent said he is willing to stipulate that he received a warning notice.

MR. FROCKT: I'll put it in.

MR. JANETZKE: May I make the stipulation?

MR. FROCKT: It says "Bill Wells. Date, 4/10/68.

Nature of Violation - defective work is checked off, and carelessness is checked off. The remarks, "all failure to perform work as directed."

MR. RECTOR: We'll stipulate.

TRIAL EXAMINER: You might just as well have offered it.

MR. FROCKT: You're right.

BY MR. FROCKT:

Q Mr. Wells, now I want to ask you -- I want you to look at General Counsel's Exhibit 2, and now I know you have a little trouble reading, but have you ever seen anything like that on the bulletin board?

[Document handed to witness.]

A Yes, sir.

BY MR. FROCKT:

Q Do you know what they are?

A That's a notice.

237 Q Has anybody ever read them to you?

A No.

Q Do you know anything about the rules the company put up?

A No, not too much. I never did read them.

TRIAL EXAMINER: Are you able to read, Mr. Wells?

THE WITNESS: No, not too much.

TRIAL EXAMINER: How much schooling have you had?

THE WITNESS: Oh, I went to about third grade

TRIAL EXAMINER: How old are you, Mr. Wells?

THE WITNESS: 63.

BY MR. FROCKT:

Q All right. When you were hired were you on a probationary period?

A No, sir.

Q Have you worked out there longer than any other employee?

A Yes, sir.

Q Did you know anything about a probationary period of any employees since you started work, probationary period of new employees since you started work?

A No, I don't recall as I do.

Q Okay.

* * *

238

FURTHER DIRECT EXAMINATION

BY MR. JANEALKE:

Q Has your rate of pay changed since the hearing in January?

A No, sir.

Q Of the employees that testified at the previous hearing, how many of them are still employed by Tilden Products?

A Not anybody but me.

Q You're the only one left?

A Yes.

* * *

CROSS-EXAMINATION

BY MR. RECTOR:

* * *

242

A Now, we never got to this. He put this girl on this job. He sat down and he showed her how to run this job. He told me, he said, "Bill, watch her."

I said, "All right."

So I watched her, and I checked the parts, and every time I checked them the parts was good, but she run a lot of bad parts on that machine. And when he started operating to run them on the other machine they didn't fit, some of them didn't. So Mary come back there, and Mary -- I told Mary, I says, "Some of these parts don't fit." And I reckon she told Mr. Hollender. So he come back there, and he said, "I thought I told you to watch her".

I said, "I did." I was working on the press right beside her. I said, "Every time I checked them they was all right."

He said, "Do I have to nurse maid you and everybody else that's in here?"

I said, "No."

He said, "You know what?" He said, "You just don't give a damn how things is run around here." He said, "You just don't care." He says, "For all the damn good you are around here you might just as well get the hell on out."

243

Q That's when he gave you the warning notice, wasn't it?

A Right after that he gave me the warning notice.

Q All right. Now, I'll ask you this, Bill, if you were watching that girl, and you were assigned to that job of watching that girl to show him that you could do some of these things, how did these bad parts get run?

A Well, she didn't put them against the top.

Q Where were you?

A I was working on another press beside her.

Q But you should have been watching her. Is that it?

A No. I couldn't stand there and watch her and work, too.

Q Well, anyway that's how you got the warning notice, wasn't it?

A I suppose it was. Right after that he gave me one.

Q Well, what did he do, give you three days off, or what?

A No.

Q Or just the notice?

A He just gave me the notice. He didn't give me no time.

250 Q What two statements was he questioning you about?

MR. PROCKT: Objection.

TRIAL EXAMINER: Overruled.

A When he come in -- when he called me in the office?

BY MR. RECTOR:

Q Yeah.

A He wanted to know when I come back down here to the hearing.

Q Yeah.

A He wanted to know what they said, what Mr. what's-his-name said. He wanted to know what Mr. Janetzko said.

Q Yeah.

A. And I told him what I done, I done it on my own, nobody told me nothing, nobody buyed me for nothing.

REDIRECT EXAMINATION

251

BY MR. JANETZKE:

Q Mr. Wells --

252

A. Yes, sir.

Q -- you were questioned concerning employees who testified, they were no longer working. Now, those people -- do you know who testified on behalf of the General Counsel and on behalf of the Charging Party?

MR. RECTOR: I'm going to object to the entire line.

MR. JANETZKE: This was covered on cross-examination.

TRIAL EXAMINER: Yes. I'll overrule it. But I'm afraid you're getting yourself in deep water in questioning this witness about adverse and favorable witnesses.

BY MR. JANETZKE:

Q Do you know who testified for and on behalf of the Charging Party and on behalf of the General Counsel at the first hearing?

A. Yes.

TRIAL EXAMINER: Do you understand the question?

BY MR. JANETZKE:

Q Now, those employees who testified, how many are
still working? A Only me.

CROSS EXAMINATION

253 MR. FROCKT: This again is corroborative
testimony to Mrs. Reese's.

MR. RECTOR: To whose?

MR. FROCKT: Mrs. Wilson's. Of April 16th.

MR. RECTOR: We can stipulate to it. We'll
concede it.

MR. FROCKT: You concede that this witness will --

254 MR. RECTOR: Would corroborate what Mrs. --
Mrs. Wilson, was it?

MR. FROCKT: I'm sorry. I don't propose that.
I'm sorry. I do want to question this witness. I'm very
sorry.

Whereupon,

CREOLA REESE

a witness called by and on behalf of the General Council,
being first duly sworn, was examined, and testified as
follows:

DIRECT EXAMINATION

BY MR. FROCKT:

Q State your name, please.

A Creola Reese.

Q And your present position?

A Chief Steward of Local 753.

Q And were you the union agent in charge of the organizational activities at this plant?

A Yes, sir.

Q Tiidee Products?

A Yes.

Q What Local was that?

A 753.

MR. RECTOR: 753?

255

THE WITNESS: IUE-AFL-CIO.

BY MR. FROCKT:

Q Now, directing your attention -- Have you been present in the hearing room during Mrs. Wilson's testimony?

A Yes.

Q Now, directing your attention to April 16th, which we all agree on that date, did you in fact accompany Mrs. Wilson out to the plant?

A Yes.

Q All right. Tell us in your own words what happened that day.

A Well, I picked Phyllis Wilson up at home, and we arrived at the plant about ten after 8:00. And we walked into the door, and there's a little hall there, and we walked up to the door of the receptionist, and we opened

and walked through the door, and I told her who I was, and I wanted to speak to Mr. Hollander.

She said, "Just a minute. Wait right there."

And we waited. It's just like a little hall, on the outside there. We didn't go on the inside of the office. And she went out into the plant, and she left the door open, to get Mr. Hollander. And I heard someone yell, "Patty", and Phyllis told me that that was Mr. Hollander. And then I recognized his voice after she said that. Well, I asked who it was. I asked, "Who is that calling Patty?"

256

She said, "Well, that's Mr. Hollander", and I said, "I thought it was."

About five minutes later Mr. Hollander and Patty and Mary Burgher, they appeared in the doorway, and the receptionist, she stood in the background more or less. And Mr. Hollander stopped in the doorway and he said, "Well?"

I said, "Mr. Hollander, I'm here to -- I want to speak to you concerning Phyllis Wilson's relief on the elbow machine."

And at that time he became very angry, and he said, "I don't want to talk with you concerning anything about the union." He says, "If you have anything to say about the union or any of my employees you are to go through my representative, Harvey Kector." He said, "You don't have any business out here." He said, "I told you to go through

Harvey Rector if you have anything to say about the union or about any of the employees out here." He said, "And furthermore, as far as I'm concerned I don't even know you." He said, "I've never seen you before."

And then I said, "Well, Mr. Hollander, if you don't know me and you've never seen me before," I said, "why did you come up here when the receptionist told you who I was and that I wanted to see you?"

257 He said, "I want both of you to get out of here, and get out of here right this minute." And he said, "Get out get out", and he was almost shouting, and the more he said "Get out" the louder he got, and he was waving his hands all up the air, and I think Phyllis, she got upset over it. So when he first started talking he started talking to loud she got more or less in back of me, and I guess she thought I was going to protect her from him.

So she started out. I started out, too, and on the way out he just kept yelling, "Get out, both of you, get out of here", and all of a sudden I thought, well, I'm going to say something else to this man, and I turned around and I told him, I said, "You know, you're nothing but a big bully." I said, "Furthermore, you're just a big boy." And, boy, he really went wild then, he got worse, and he started yelling, saying I'd better get out of there, and he didn't want us to come back in that place, don't come back there no more, get out, get out.

And then as I was walking, I was almost to the door, and all of a sudden it struck me, now maybe he thinks I'm running, or maybe he thinks we're afraid of him. So I turned around again, and I told him, I said, "I still say that you're nothing but a big bully. You're just a big boy," I said, "and you are not a man, because men don't act the way you're acting, and if you were a man you wouldn't need two women to assist you when you come up here to talk to me," and by that time he was just a couple steps away from me, and the way he was coming towards me I thought maybe he was going to grab me, or hit me, or something, and then I hurried up a little bit and made it on out the door, and he stopped at the door - of course he didn't come past the door.

RONALD H. JANETZKE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. PROCKT:

Q Mr. Janetzke, state your name, occupation, and address.

A Ronald H. Janetzke, General Counsel District 7, IUE-AUL-CIO-CNC, 3461 -- Do you want my home address?

Q Yes.

A 10 Gracewood Drive, Centerville, Ohio 45459.

Q All right. Now, have you been involved with this campaign and subsequent situation with Tiidge Products?

A Yes, I have.

Q Since when?

A Well, since we commenced our organizing campaign in January of 1967.

Q Are you sure about that date when you commenced it?

A Well, we commenced it long before we filed our petition.

MR. RECTOR: I'm going to object.

260 A [Continued] If that's what you mean.

MR. RECTOR: What's the purpose of this? I don't see where it's material.

MR. FROCKT: All right.

MR. RECTOR: We've had a campaign there for some time.

MR. FROCKT: All right.

MR. RECTOR: We admit that.

MR. FROCKT: All right.

BY MR. FROCKT:

Q Have you had ---

MR. RECTOR: We had a campaign there even before you had one. We even admit that.

BY MR. FROCKT:

Q Have you had occasion to talk to Mr. Hollander on the telephone?

A Yes, I have, several times.

Q Have you had occasion to talk to Mr. Rector on the telephone?

A Oh, many many times.

Q Okay. Now, did you ever have an occasion since the last hearing to have a conversation with Mr. Hollander over the telephone concerning any of his employees?

A Yes, sir.

261 Q Okay. Now, who was the employee?

A I talked to Mr. Hollander concerning Pauline Messer.

Q All right. When did you talk to Mr. Hollander concerning Pauline Messer?

A I called Mr. Hollander on April 18, 1968.

Q All right.

A At approximately 10:25 a.m., that would probably be the exact time.

Q All right. Tell us, did you speak -- What did you do?

A I called the Tilden plant. I asked for Mr. Hollander. I got an individual who identified himself as Hollander.

Q Did you recognize his voice?

A Yes. I had talked to Mr. Hollander over the telephone on other occasions, and I had met him at the election.

Q All right. And at the last hearing of course. Now, tell us what you said to him and what he said to you.

A I informed Mr. Hollander that another of his employees had joined the I. U. E. and her name was Pauline Messer. Mr. Hollander said that he didn't want to talk to me, that if I had anything to say I should contact his representative, Rector.

262

I informed Mr. Hollander that I called for one reason, and only one reason, and that was to tell him that Pauline Messer was a union supporter, whereupon, Mr. Hollander hung up the telephone on me.

Q Is that all you can recall of that conversation?

A That's all that was said.

Q Okay. You stated it was 10:25.

A Approximately.

Q You said the exact date. How can you tell the exact date, the exact time.

A I made a memo immediately after the conversation, a memo to my file, my personal file.

Q Do you put memos to these files for various --

Is this a normal business record?

A When I have what I consider to be an important conversation I dictate a memo to my file concerning that conversation.

MR. PROCKT: Mark that as General Counsel's Exhibit 7.

[Whereupon, the document, above referred to, was marked General Counsel's Exhibit No. 7, for identification.]

[Document handed to Counsel for Respondent.]

BY MR. PROCKT:

263

Q I hand you what has been marked for identification as General Counsel's 7, and ask you what that is?

[Document handed to witness.]

A That's a copy of the memorandum. It's entitled Inter-Office Correspondence. It goes in my files. It's the memo I dictated immediately after my conversation with Mr. Hollander on April 12.

MR. PROCKT: I move for the admission.

MR. RECTOR: I will object to its admission on the ground of course that this is a self-serving document.

MR. PROCKT: Well --

TRIAL EXAMINER: Mr. Rector, do you intend to contest the fact that he made that call?

MR. RECTOR: Absolutely not.

TRIAL EXAMINER: Or the contents of that call?

MR. RECTOR: No.

TRIAL EXAMINER: Do you want to withdraw the exhibit?

MR. FROCKT: Fine. If he will stipulate to this call, or he's not going to contest it, fine.

MR. RECTOR: Okay.

MR. FROCKT: I withdraw it.

MR. RECTOR: It wouldn't do any good in evidence any way.

264 MR. FROCKT: Well, I thought perhaps -- That's not for you to decide, Mr. Rector.

MR. RECTOR: All right. All right.

[Whereupon, the document, heretofore marked General Counsel's Exhibit No. 7, for identification, was withdrawn.]

BY MR. FROCKT:

Q Did you have a conversation with Mr. Rector concerning Phyllis Wilson, also?

A Yes, I did.

Q When did this conversation occur?

A April 16, 1968.

Q And what time did it occur?

A 9:10 a.m.

Q And why did the -- Why did you make this call?

A Well, I called basically because of the whole Phyllis Wilson incident.

Q When was that? You mean that morning?

A Well, I talked to Phyllis before that, also, before that morning. It basically surrounded the who? incident.

Q All right. Tell --

A Including the incident that morning involving Creola Reese and Phyllis Wilson.

Q At any rate --

265 TRIAL EXAMINER: Well, the subject of the conversation was Phyllis Wilson, and what occurred in connection with her activities.

THE WITNESS: That and more.

BY MR. PROCKT:

Q Did you identify Mr. Rector's voice?

A Oh, yes.

Q Okay. Tell us what was said during that conversation.

A Well, I asked Mr. Rector, or I informed Mr. Rector that I was calling concerning Phyllis Wilson having to work on the elbow machine full days, that is the whole work day whereas in the past that had not been the employer's practice, the employer's practice being to work the female employees doing the elbow machine work half days

and giving them the other half a day relief on that work.

Q What else? What did Mr. Rector say?

A Oh, Mr. Rector said that Phyllis Wilson was the one who had indicated animus towards Mr. Hollander by her statements at the previous hearing, in fact that statement was repeated by Mr. Rector three or four times. We had two conversations that day, and we went over the same thing basically two times.

I informed Mr. Rector that when he stated there were probably some hard feelings between Hollander and Rector, I mean Hollander and Wilson, I informed Mr. Rector that was probably true, that there were hard feelings. But that Circola Reese and Phyllis Wilson had been to the plant that day, and that Mrs. Reese had been sent by me in order to resolve the problem of having Phyllis Wilson work a full day on the elbow machine, and then Mr. Rector had instructed them, and more particularly Mrs. Reese to contact him, that's referring to Mr. Rector, and that was the reason I was calling Mr. Rector.

I elicited Mr. Rector's help in resolving this matter. I asked him if he would intercede, or talk to his client in the hope of resolving this matter. Mr. Rector indicated that of course if we felt that -- well, I indicated that Phyllis Wilson -- well, perhaps the union felt she had been assigned this work because of her testimony at the

hearing and because of her union activity. Mr. Rector indicated of course the union had its remedy if it so felt that she was being discriminated against because of her union activity, her testimony at the hearing, by going to the Labor Board. I asked Harvey Rector -- well, I advised him that that was true, we had our remedy with the Labor Board, but I hoped to settle matters without utilizing the Labor Board, and I hoped we could do so on this occasion, to try to resolve it between ourselves without litigation.

Q Anything else?

267 A Mr. Rector merely repeated the fact that this is sort of a fight between -- a personal fight between Wilson and Hollander. And at one point during the conversation he mentioned the fact that she had used the word "childish" to describe Mr. Hollander's conduct, and this may have led up to some hard feelings, and I indicated my concurrence, that that may very well have indicated hard feelings between them.

Q All right. What else was said in this first conversation?

A Oh, I believe Mr. Rector indicated that on April 12 -- excuse me -- the previous night, which would be April 15 --

Q Wait a minute. Which conversation are you talking about now?

A During the telephone conversations.

Q How many telephone conversations did you have?

A I had two.

Q All right. Have you told us everything about the first one?

A I think there was one more item, but it may have occurred during the second one.

Q Let's go to the second conversation. What did he do? Did he call you back, or what?

A Yes. I asked Mr. Rector if he would talk to his client, talk to Mr. Hollander, and requested that he try to get Mrs. Wilson some relief on the elbow machine, half-day relief. And that was the extent of the conversation.

And then Mr. Rector, pursuant to his promise, called me back in the afternoon, I would say approximately 2:00 p.m., maybe a quarter after 2:00, something like that, and he informed me that he had talked to Mr. Hollander, and that this information that he, Rector, had received indicated that Phyllis Wilson was not required to work on the elbow machine, that in fact she was working on the 123 machine. Some question arose between ourselves whether that was the same machine, and Mr. Rector felt they were not the same machine, that there was a 123 machine and an elbow machine.

I asked Mr. Rector, "Well, no matter what machine, whether it's the 123 or whether it's the elbow machine, would the employer be willing to give her a half day's relief?"

Mr. Rector indicated that the employer would not be so disposed, that if she was going to work she would have to work under the conditions assigned by the employer.

Q What else was said during this conversation?

269 A Well, during the first conversation Mr. Rector had mentioned to me that Phyllis Wilson had shoved another employee into the machine, not identifying the employee, and that Phyllis Wilson had been absent from work that one day, and when she returned to the plant, on questioning by Mr. Rector -- Mr. Hollander as to why she had not reported in, that Wilson had told Mr. Hollander she did not think it was important.

When Mr. Rector called me back, and returned my call in fact, he gave me the particulars of those incidents, and he said that Phyllis Wilson had shoved Connie McGoon into the elbow machine, and then repeated the incident about, when question about why she didn't call in, Phyllis Wilson is alleged to have said she didn't think it was necessary, or important to do so.

I believe it was during the first conversation, and it might have been during the second, that Mr. Rector mentioned that it was his understanding that the union observer was the one who was running the elbow machine. I informed Mr. Rector that that would be Claudine Tackett, and it was clear that Claudine Tackett had never run the

elbow machine, that she worked exclusively on plastics, she had no experience, and had never run the elbow machine.

I asked several times if there was anything we could do to resolving it towards getting her some relief, and Mr. Rector said that, noted that the I. U. E. was not yet the recognized, and used the word recognized, bargaining agent, and we would have to seek other relief because she would have to work under the same conditions that she was working under when she left the plant.

270

MR. FROCKT: That's all.

A. [Continued] And that's the way we ended the conversation.

CROSS-EXAMINATION

BY MR. RECTOR:

Q I indicated to you during those conversations that I was calling the plant and Hollander and talking to people there and giving you what I had found out on these calls.

A. Oh, yes. You told me that you had talked to Mr. Hollander, and the facts you gave me is what you indicated you had received from talking to Mr. Hollander.

Q Well, now, about that time, while I was talking to -- calling and talking to Hollander -- well's that's not important here, I mean at least you indicated that you and I would try some way to get the issue out of the way.

MARY L. MAYER

CROSS-EXAMINATION

BY MR. FROCKT:

Q One question. When you sat with -- When she said "If you sit with me," you said, "I'll get fired". Now, did she say she, Pauline Tackett, will get fired, or you, Mary Mayer, will get fired?

A Well, the way I understood it -

Q Well, did she say "You will get fired" or "I will get fired"?

A She said, "I'll get fired", so I guess she meant her.

JEWELL ROYALINE

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

TRIAL EXAMINER: Be seated, please.

DIRECT EXAMINATION

BY MR. RECTOR:

Q And what job do you do there?

A I wind the water hose.

Q Water hose?

A Yes, sir.

Q Now, Jewell, there has been some testimony here about how many boxes of those normally should be run in a day on that machine.

Could you tell us approximately what your
production is each day?

275

A.

Well, sometimes I get 40 to 45 a day.

Q

40 to 45?

A.

Boxes.

FURTHER CROSS-EXAMINATION

279

BY MR. JANETZKE:

Q

You do wind the hoses on the winding machine,
don't you?

A.

Yes.

Q

Now, when you're winding hoses on the winding
machine could there be a third coupling in between the two
end couplings and you not know it?

A.

Not unless I'm specified to do it.

Q

Well, if there was a coupling hanging loose in
between the two end couplings would you know it?

280

A.

Yes.

Q

Why would you knot it?

A.

Because there's just supposed to be one on each
end.

Q

Pardon?

A.

Just one on each end.

Q

Could you possibly run a hose on the winding
machine and have a coupling in between the two end

couplings, a third coupling, and not know it?

A No, sir.

ELEANOR KLEISMIT

281

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

282

BY MR. RECTOR:

Q Will you state your name and address for the record?

A Eleanor Kleismit, 24 Ritter Avenue.

Q And where do you work, Eleanor?

A At Tiidee Products.

Q And how long have you worked at Tiidee Products?

A About 15 years.

Q Did you ever have a conversation with Mr. Hollander concerning complaints that he'd had on the hoses, water lines?

A Yes.

Q What did Mr. Hollander tell you?

A He's been getting complaints from the customers, and I should inspect them.

Q And did you start inspecting them?

A Yes, sir.

283

A. Yes, sir.

Q And what did you find when you started inspecting them?

A Well, several boxes were short all the time.

Q Yeah.

A And then Claudine would walk away and say, "Somebody is taking it out of there", when you'd say it to her.

Q In other words, were those her boxes that you found the short in?

A She brought them over when they were open, and I checked them.

Q Yeah. Were any of them -- Did any of them ever have too many in, too many tubes in?

A Yes.

Q Were any of them under number?

A Yes, sir.

Q Did you tell Claudine Tackett about that?

A Well, I told Mr. Hollander first.

Q Yeah.

A Then I would mention it, that it was short.

Q Yeah.

A And then she'd walk away and say, "Well, somebody is taking it out of my boxes."

CROSS-EXAMINATION

267

BY MR. PROCKT:

Q All right, Mrs. Kleismit, you stated that you had complaints from customers that some of the water line boxes were short and over in the number.

How many are required to be in a box?

A Eight.

Q Eight?

A Eight.

Q All right. When did these complaints occur?

A They've been complaining right along.

Q Well, let's hear --

A Because we had some come back.

Q Why don't you tell us when the complaints started

A Well --

Q -- because as you know Mrs. Tackett did not work during the entire period the past year. Now, when did these complaints come in, Mrs. Kleismit?

A Oh, it must be about a year.

Q A year ago?

A Probably about a year ago.

Q And how many complaints did you receive?

A Well, I don't get the complaints myself, but I get it from the office, they tell me.

Q All right.

268

A. Then I have to resend the water line to the customer.

Q. All right. A year ago they started. Right?

A. I don't know how long ago it's been. I guess about -- maybe more than a year. I'll say a year ago.

Q. And how often did these complaints come in?

A. Well, when I'd go in the office, if I'd get an office, and they'd say, you have to send so many, and so many water lines. Then I'd have to send the ..

TRIAL EXAMINER: How many complaints have you received during the past year?

THE WITNESS: Oh, I don't know. I'd say about eight or nine complaints.

BY MR. FROCKT:

289 Q. Now, in the past year isn't it a fact -- You've been there for 15 years -- that Mrs. Tackett only worked one week in September, and from March to May of this year?

A. Yeah.

Q. All right. And --

A. But I'm getting them all at one time when they started sending in complaints, then I was getting -- I couldn't tell you the exact months or anything, but when I would get an order --

Q. You got complaints --

A. What is it?

Q You got complaints not only on Mrs. Tackett, but other people were doing this work, weren't they, when she was off and you got complaints during the whole period. Right?

A Yeah, but what I -- when I was inspecting hers I always found it short, and sometimes I tried to open up some boxes that somebody else did, I just wanted to check to make sure, and they'd be all right.

Q And you stated that you did get complaints when she wasn't working there. That's what you just stated. Correct?

A Well -- But you don't know how long the customer had the water line before they called in.

292 Q Is that the only time that one of those -- that something like that has occurred?

A That's the first time I saw it like that.

Q Has anything in 13 years occurred to your knowledge with three couplings on it?

A I haven't seen any.

Q This is the first instance, then.

A That's the first time I saw it.

TRIAL EXAMINER: Is that the only one that you've seen?

THE WITNESS: That's right.

298

TRIAL EXAMINER: Can you give us approximately the time when you found this defective coupling which has been shown to you as Respondent's Exhibit 1? Was it during this year?

THE WITNESS: I didn't -- It was during this year, this spring.

TRIAL EXAMINER: Was it early or late spring?

THE WITNESS: I imagine the early spring.

TRIAL EXAMINER: Can you approximate what month it was?

THE WITNESS: I don't know, I couldn't say.

BARBARA TIPTON

299

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. RECTOR:

Q Will you state your name and address for the record, please?

A Barbara Tipton, 31 McCready Avenue.

Q Where do you work, Barbara?

A Tiidee Products.

Q How long have you worked there?

A A little over six months.

Q What do you do there, what type of work do you do there?

A. I run the elbow machine.

Q The elbow machine?

A Yes.

Q Do you run any other machine?

A Oh, I've run quite a few.

300 Q Did you ever work on the winding machine?

A No, sir.

Q Did you ever work on the hoses-

A No, sir.

Q Now, were you present when Claudine Tackett was told to go on the elbow machine by Mr. Hollander?

A Yes, sir.

Q And what did Claudine say, to the best of your knowledge?

A Well, when she came in he told her that she was to run the 90's, which is the elbows, and she said, "Mr. Hollander, I will not run the elbow machine."

And he said, "What?"

And she said, "I absolutely refuse to run the elbow machine."

And he said, "Why?"

And she said, "I'm afraid if I get sick nobody will come to me."

And he said, "Are you sick now?"

And she said, "No, but I might get sick," and

she said, "and nobody would come to me."

And so anyway he told her, he said, "Wait. I'll talk to you."

And I told him at the time, I said, I told him I would run the elbow machine because he had just broke a new girl in, and he wanted to put her on something else, so I told him I would run the machine for him. And she walked away. And I went on to the machine, the elbow machine.

Q Have you ever seen her back in the shop working since then?

A No, sir.

Q Now, you say you've operated the elbow machine?

A Yes, sir.

Q Have you run it all day at a time?

A Yes.

Q All week at a time?

A Yes, sir.

Q Is it a difficult job to run?

A No, not really. You've got to set a pace and just keep it. It's not hard..

CROSS-EXAMINATION

BY MR. FROCKT:

Q Had you run the elbow machine before this day Claudine Tackett said she would not run it?

A Yes, sir.

Q How often had you run it?

A Well, I don't know. I run it while Mrs. Wilson worked there, and she run the elbow machine, and when she left they put me in on it.

Q Yes.

A And Mrs. Tackett and I worked it double, it was either two or three days.

Q Uh huh.

A But I run it several weeks before by myself.

Q Uh huh.

A And then she was off sick, and when she came back he asked her to go on it and she refused.

Q Are you working on it now?

A I had been up until I hurt my foot.

Q And it is very difficult to run that machine when your foot is hurt, isn't it?

A Well, when it's hurt like my foot is, yes.

Q What's wrong with your foot?

A I tore a tendon loose from the bone.

Q Did you have an accident?

A No. I had had a weak tendon in the foot and some way or other over the weekend it tore loose.

Q And with a bad foot it's very difficult to operate that machine, isn't it?

A No, sir. I could still do it, but the doctor

ordered me - I'm not to put no more weight on it than I
have to on the foot.

* * *

MARJORIE PRATT

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

TRIAL EXAMINER: Be seated.

DIRECT EXAMINATION

BY MR. RECTOR:

Q Will you state your name and address for the record, please?

A Marjorie Pratt, 3590 Ark Avenue, Dayton, Ohio.

Q And where do you work, Mrs. Pratt?

A Tiidee Products.

Q And how long have you been there?

A A little over a year.

Q And what position do you hold over there?

A I'm the office girl.

Q The office girl?

A Right.

Q Did you have any occasion to be present at a conversation between Mr. Haywood and Mr. Hollander in your office?

A Yes, sir, I did.

BY MR. RECTOR:

Q Now do you recall April 12th, 1968 when a Mr. Wilson came into the office?

A Yes, I do, sir.

Q Could you tell us what happened?

A Yes, I can. I don't remember the date. But he came in to pick up his wife's check.

TRIAL EXAMINER: Came in alone?

THE WITNESS: He came in alone.

BY MR. RECTOR:

Q And what did he say to you?

A He asked if he could pick up his wife's check, I guess Phyllis' check. And so I called Mr. Hollander. And when he came in he asked where Phyllis was. And Mr. Wilson said she was out in the car. And Mr. Hollander says, "Go get her."

So he did.

And that was it.

TRIAL EXAMINER: *** Did you ask him to identify

311

himself?

THE WITNESS: I think he said, "I'm Phyllis Wilson's husband," or something to this effect, "and I came for her check".

BY MR. RECTOR:

Q Now, then, can you tell us, then, what Mr. Hollander said to him?

A He asked him to go get Phyllis out of the car, and which he did. He went out and brought her in.

Q Then Phyllis did come into the office?

A Yes, she did.

Q And what did Mr. Hollander say to her?

A Well, he asked her where she had been. And she told him that she had quit on Monday the week before.

Anything else?

Q Well, did she say anything about why she quit or anything?

A Yes, she did. She said she had had a phone call informing her that she had been fired by Tildex Products.

Q Who did she say told her that?

A Mr. Janetzko.

312 Q What did she say after that, then?

A She said it did not matter anyway, "I told him this, because I had quit on Monday prior to this".

MR. RECTOR: No further questions.

CROSS-EXAMINATION

BY MR. PROCKE:

315 Q Now, concerning the Wilson-Reese visit.

A Yes, sir.

Q You stated that Mr. Hollander came out after you got him.

A Yes, sir.

Q And said to Mrs. Reese, "What do you want to talk to me about?"

A Yes, sir.

Q Right?

A Right.

Q Is that the way Mr. Hollander normally greets visitors?

A Depending on the visitors, I imagine.

Q And you used some emphasis in your tone of voice in saying that, and Mr. Hollander used some emphasis, too, didn't he?

A I didn't use any emphasis that I know of.

Q What emphasis did Mr. Hollander use?

A Normally, just as he talks normally, "What did you want to talk to me about?"

Q All right. Now, you stated during - after this he told them to get out. Right?

A Right.

Q How did he say this to them?

A He said, "You have no business here. If you have anything to discuss, contact Mr. Rector".

Q Then what did he say?

A "I have nothing to discuss with you."

Q And then he told them to get out?

A Right. "Leave the plant".

Q What words?

A He didn't tell them to get out. He told Mrs. Reese to get out.

Q All right. Did he say, "Mrs. Reese, you get out"?

A No, he said, "You have no business here," and he was speaking directly to Mrs. Reese, and so he says, "Get out."

Q And how many times did he have to say, "Get out"?

317
A Oh, he probably said it three or four times, because she was talking at the same time. I don't know, I didn't count the times. He probably told her two or three, four times to get out.

Q How did he tell her?

A He said, "I have nothing to discuss with you."

Q He said --

A "Get out."

Q Get out

A "Get out".

TRIAL EXAMINER: Did he use any gestures?

THE WITNESS: No, he didn't, sir.

BY MR. PROCKT:

Q Do you recall what Mrs. Reese said during the conversation?

A Well, that she had come for relief for the girl on the elbow machine.

Q Didn't she say Phyllis Wilson?

A Yes, sir.

Q Okay.

A And then when he would not discuss this with her, then she made a few - called a few names.

Q Who?

A She said, "Mr. Hollander," -- or she didn't say, "Mr. Hollander". She said, "You're nothing but a big
318 bully", and shook her finger.

Q What did Mr. Hollander do?

A Mr. Hollander says, "Get out".

Q Now, concerning Mrs. Wilson and Mr. Wilson - right?

A Right.

Q How come you didn't give Mr. Wilson her check?

A I don't have the checks. I do not give anyone a check. Mr. Hollander has the checks. I have to call him.

Q Okay. Fine. Now, did you overhear -- You were present, were you not, during the entire hour of conversation?

A I wouldn't say an hour.

Q It was a long time, wasn't it?

A I was present for a few minutes. I cannot leave my work for an hour, so I know I was there for part of it.

Q Where is your desk?

A In the other office.

Q Well, were you present during the -- you were

present then during the --

A During the conversation.

Q And one of the first things when Mrs. Wilson walked in, Mr. Hollander immediately asked, "Where have you been?" Right?

A He asked her where she had been, right.

319 Q Now, do you type discharge notices, warning notices?

A Do I? Warning notices, yes; not discharge notices.

FURTHER DIRECT EXAMINATION

BY MR. RECTOR:

320 Q Mrs. Pratt, were you present in the office on or about May 17, 1968; did you witness a meeting between Mr. Hollander and Claudine Tackett and her father?

A Yes, sir.

Q Will you tell us what transpired there?

A Well, I was in the office alone, and a gentleman came in, I didn't know who, so he walked directly into the office and told me he had come to pick up Claudine Tackett's check.

So I looked up at him, and I said, "Who are you?"

And he would not answer me. Anyway he said,

"It's none of your damn business who I am."

Q And what did you say?

A. So I said, "Well, if it isn't any of my business would you step out in the hall, please, and wait?"

And he said, "If you think you're big enough, make me."

So I said, "Well, perhaps I'm not big enough but I know someone that is."

And I immediately got Mr. Hollander.

Q. Now, then, what happened after Mr. Hollander came in?

A. Mr. Hollander came in and asked him who he was. Well, after two or three askings he told him that he was Claudine's father, and she was waiting out in the hall but I could not see her because she had come on into the office. And then he asked him to leave, and he would give Claudine her check, when he left, when the man left the building.

321

So that's all I remember.

Q. Did he leave the building?

A. After two or three askings he left the building, and after him getting a little bit loud he went out and held onto the door outside the building for a while and left the door open, and Mr. Hollander asked him to get completely out of the building, he did not belong there.

Q. What did he say to Mr. Hollander then?

A. He asked him to come outside.

Q. And what did -- Did Claudine then come in and get

her check, or what?

A She stood in the hallway, and Mr. Hollander --

Q Was there any conversation between Mr. Hollander and Claudine?

A Yes. Mr. Hollander asked her why she hadn't been in, or why she hadn't called in, if she had quit. And she said no. So he said, "Wait just a moment", and he went in and got the notice, and he says, "Now, you are fixed".

323

CONNIE McGOON

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

TRIAL EXAMINER: Be seated, please.

DIRECT EXAMINATION:

BY MR. RECTOR:

Q Now, do you work on various machines -- or explain what you do.

A I have worked on various machines; on punch presses, the elbow.

Q The elbow machine, too?

A Yes, sir.

Q And this, I believe, is a multi-machine, is it?

A Yes, sir.

Q Have you done winding and water line hose work, too?

A Yes, sir.

Q Could you tell us if the elbow machine is any harder to operate than the hose machine?

A No, sir.

Q And have you operated the elbow machine all day?

A Yes, I have. I've run it all day for about two or three months.

Q Every day of the week?

A Yes, I did.

Q There's been some testimony here, Connie, that Phyllis Wilson pushed you into the elbow machine. Could you tell us something about that?

A Yes. She had been on her break, and she had been relieved, and she came back, and the elbow had just finished coming out and I was getting ready to pull it, and she pushed up beside me and she kind of hit me like, and she turned around and laughed at this other person about it.

Q Well, were your hands in the machine at the time?

A Yes.

MR. JANETZKE: Objection. This is leading the witness.

TRIAL EXAMINER: Yes. I'll sustain the objection.

Tell us what you were doing at the time, and also in what manner she hit you.

THE WITNESS: I was getting ready to pull the elbow out of the machine. I had my hands on the pliers.

And I was getting ready to pull one out, and Phyllis was standing there beside me and kind of shoved me.

Q TRIAL EXAMINER: What part of your body did she hit, with what part of her body?

THE WITNESS: She kind of hit -- Well, she was standing beside me, and she kind of hit my arms.

Q TRIAL EXAMINER: With what part of her body did she hit your arms?

THE WITNESS: The side of it.

Q TRIAL EXAMINER: Her arm, too?

THE WITNESS: Yes.

326 Q ****
Could you tell us what Phyllis Wilson said to Mr. Hollander?

A Mr. Hollander asked her why she didn't call or come in to work, and she said she had received a phone call,
327 and she said that Mr. Janetzke had called and said she was fired, but it didn't matter anyway because she was going to quit.

Q Did she say she had already quit or she was going to quit?

MR. JANETZKE: Objection. The witness just testified.

Q TRIAL EXAMINER: Yes.

I'll sustain the objection.

MR. RECTOR: I withdraw the question.

Now, Mr. Examiner, the leading questions, or so-called leading questions in comparison with this side of the counsel table and this one over here, there's quite a difference. However, I'll take it as it is.

TRIAL EXAMINER: Do you wish to make any further comment along that line?

MR. RECTOR: No.

TRIAL EXAMINER: Or any innuendo?

MR. RECTOR: No.

BY MR. RECTOR:

Q Well, what else did you hear at that meeting?

A That was all I recall.

Q Were you in the vicinity of the elbow machine when Mr. Hollander was talking to Claudine Tackett?

A Yes, sir.

328

Q Did you hear what was said then?

A I started it up -- I had just started the elbow machine up, and claudine was standing there and she asked Mr. Hollander what job she was going to do, and Mr. Hollander said the 90, and she said she refused. And Mr. Hollander said, "Why?"

She said, "I might get sick."

And Mr. Hollander said, "Are you sick now?"

And she said, "No, but I might, and nobody won't relieve me."

Q What happened after that?

A And then she just walked away. Mr. Hollander said he'd talk to her, and she just walked away.

Q Have you seen her back in the plant working since then?

CROSS-EXAMINATION

BY MR. PROCKT:

Q Now, first of all on this incident, you said she shoved you?

A Yeah.

Q How hard did she shove you?

A I mean it's dagger enough that you could, I mean easily move, probably move the machine.

329 Q It was just a nudge like, wasn't it?

A Yes. It might have been a little bit harder.

Q Did you actually lose any balance at all?

A No, but I probably would have, I mean I could have.

Q All right. In fact you had your hands on the pliers pulling that elbow out of that machine. Right?

A Yes, sir.

Q And isn't it a fact that it would have been impossible for your hands to go into that machine when they were holding the pliers?

A Yes, but like my hands, --

Q Yes or no?

A Yes, sir.

Q All right. And isn't it a fact that the door will not close, the door to that machine, will not close automatically but you have to close the door manually?

A Yes.

Q That's right.

333 Q Mr. Hollander, after she said she wasn't going to work, that she was going to get sick - or she might get sick, et cetera -- that's what you testified to. Right?

334

A Yes.

Q And Mr. Hollander said he'd like to talk to her, didn't he tell her to go into the lunchroom and wait for him?

A Yes, they were standing there in the lunch area.

Q And you saw them talking in the lunchroom, didn't you, did you not, after this first conversation?

A Yes, sir.

MR. FROCKT: No further questions.

One more -- if I may.

TRIAL EXAMINER: You may.

BY MR. FROCKT:

Q On the elbow machine, there are two sides of it. Right?

A Yes, sir.

Q One side is to run the large elbows, and the

other side is to run the smaller elbows. Is that correct?

A Yes, sir.

Q And isn't it correct that -- you state that it's not hard to run the machine, but isn't it easier to run the smaller than the large?

A No. The largers run the easier because I mean one person don't run both sides. See, we have two persons.

Q That's right. And which side is easier to run?

A It doesn't matter to me.

335

Q You don't -- Okay.

MR. FROCKE: That's all.

TRIAL EXAMINER: Any redirect?

MR. RECTOR: No redirect.

TRIAL EXAMINER: Did you complain to anybody about your incident with Mrs. Wilson?

THE WITNESS: No, sir.

TRIAL EXAMINER: That will be all.

ADAM CAMPBELL

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. RECTOR:

Q Will you state your name and address for the record, please?

336 A. Adam Campbell, 509 Tiffin Place, Dayton, Ohio.

Q And where do you work at?

A Tiidee Products.

Q And how long have you worked there?

A A little over ten months.

Q Now, in the course of your duties have you had occasion to come in contact with John Haywood?

A Yes, sir.

Q Did you ever have any conversations with him?

A Yes. We had a pretty long one one day.

Q What?

A We had a pretty long conversation one day.

Q Could you tell us what was said?

TRIAL EXAMINER: Will you tell us when this occurred?

MR. RECTOR: Yes.

THE WITNESS: Oh, I had been there approximately three weeks, something like that, around December - no, I had been there a little -- it was around the last of November.

BY MR. RECTOR:

Q Of which year?

A Of '66 -- no -- the last of November, or the first of December, somewhere.

TRIAL EXAMINER: '66 or '67?

337

THE WITNESS: '67. Pardon me.

BY MR. RECTOR:

Q Well, now, then, go ahead and tell us what was said.

A Well, they put me on the punch press trimming these houses which John Haywood was running in the tumbling barrel. He loaded it up that morning -- well, he come in at 8:00 o'clock that morning, and he loaded it up, and while they were running he come over and had a conversation with me.

So he started talking about the women he went out with. Well, he went out with --

MR. JANITZKE: Objection. I can't see the relevancy to this at all.

TRIAL EXAMINER: What is the prospective relevancy of this?

MR. RECTOR: The prospective relevancy is that was Mr. Hollander's complaint to the parole officer, his conduct, and what he had been talking about, the women, and it had got around the plant, and it really got unbearable.

TRIAL EXAMINER: Overruled.

I'll allow it in for what it's worth.

BY MR. RECTOR:

Q Go ahead, what did he say?

A Okay. He was going out with three women - Claudine.

338 Tackett, Carol, and Sue Cantro. He would go to one's house and eat supper, he would go to another one's house and eat dinner, he would go to the other one's house and go to bed with them. All right. He wouldn't go to the same person's house to go to bed with every time, he would change it around. He would eat at one's house, a different one's house, and go to the other one's house at different times.

So he keeps talking about the women. Every morning he would come in and say, oh, boy - he's got a big head. He's been out drinking until 2:00 or 3:00 o'clock in the morning before he got in, see.

About that time he asked me what did I think about the union. So I said, "Well, they've got their good points and they've got their good points." About that time Mr. Hollander walked down the second aisle where I was at, and he said, "You'd better not let Mr. Hollander hear you say that or he'll fire you."

So he went back to work.

Q Do you recall January the 8th, 1968 when he spent a lot of time talking to you?

MR. PROCKT: Objection.

TRIAL EXAMINER: Overruled.

A Well, the times he would talk would be approximately like - he would tell me about his women, like I said, his drinking, and one particular day there, I don't

339 remember the exact date, but anyway it was about three to four and a half hours he stood there talking about the same thing over and over and over.

Q Well, had he been on a week's vacation, or off a week before that?

A Yes, he had been off.

Q About how many hours did he spend talking to you that day?

A Approximately three to four and a half hours.

Q And -- He should have been working?

A He wasn't doing nothing, for you had to be right up against one another on account of all the noise.

Q Well, were you working?

A I was standing by my punch press and he was standing right by the side of me.

CROSS-EXAMINATION

BY MR. PROCKT:

Q Concerning this last conversation, where was he working at this time?

A He was supposed to have been running the tumbling barrel.

Q Where is that?

A That was approximately from here to the wall from where my punch press was. But also with that barrel

340 running you can't hear someone unless you're right up against it, so he had to come over to my punch press where I was working and start the conversation.

Q And he stayed over there for three and a half to four hours without fooling with his machine at all.

A. Right.

Q And his machine was running, you said?

A. Right.

Q Because you had to hear it.

A. Right.

Q So it doesn't take anyone to operate that machine, or even assign anyone on it.

A. You've got to load and unload that machine every 30 or 35 minutes.

Q And that was his job?

A. Right.

Q And during the intervals he talked to you?

A. No.

Q What did he do?

A. He never took no parts out of the barrel. He left them run. He is supposed to take them out, but he didn't.

Q Well, was the machine running all of this time?

A. Yes.

Q What happened to the barrel, what was in there?

341 A They're not barrels. They're table leg castings.

Q Well, what happened to those?

A They got all scratched up and nicked up, and everything, which are not too good.

Q And he talked to you, when was this, in the morning or the afternoon?

A 8:00 o'clock in the morning, when he came in. He loaded the barrel up when he came in. All right. Approximately around dinnertime, which is 11:30, right after that he went back to work.

Q And --

A Just before dinnertime Mr. Hollander goes down the aisle, and he asked me what did I think about the union. I said they've got their good points and they've got their bad points.

Q Who told you that?

A John Haywood.

Q Well, was this during the January conversation, or the November conversation?

A That was during -- each time would be about the same thing. He wouldn't hardly change it any. Maybe now and then he would, "Well, I stayed up until 2:00 or 3:00 o'clock in the morning, out drinking," or something.

343 Q About the first week or two of January you told Hollander about this incident.

A Yes. Because I don't like to work with a guy if he's going to bother me, bother my work and not do his--

Q You told --

A -- work.

Q You told Mr. Hollander about it right away, didn't you?

A Not right away, no. I thought about it for a while.

Q How long did you think about it?

A Oh, by the end of the day.

Q But you told him -- When did you tell him, then, the next day or --

A No. By the end of the day.

Q At the end of that day. So you know for a fact that Mr. Hollander knew about it--

A Right.

Q -- since January 8th.

A Right.

Q All right. How about the other conversation, did you also tell Mr. Hollander about that one?

344 A No. Because he talked about the same thing all the time.

Q Did you tell him on January 8th about the November conversation?

A I told him about all of it, because when I'm

working I don't like for nobody to bother me. I want to do my work.

Q You told him about this talk about the women, too.

A Right.

Q Well, could anybody else overhear your conversation?

A No, because we happened to be in his office.

Q What?

A We were in his office.

Q Okay. Mr. Hollander's office?

A Right.

Q Now, you told Mr. Hollander about the first conversation at that time also?

A No. I told him at the time of January the 8th.

Q Well, how about on the November conversation, did you tell Mr. Hollander about that one?

A Because it was all the same thing.

Q When did you tell him about that?

A January the 8th.

345 Q I see. You told him about both conversations.

A Because one told them all.

Q Okay. During the first conversation how long did you talk to Hayward during this conversation?

A I didn't know him too good then because I had

just started, in other words just a few words now and then,
and we got to where it was a little more and a little more.

Q Well, it was just a few words then.

A Right.

Q Just passing remarks.

A Right.

TRIAL EXAMINER: Anything else?

MR. FROCKT: Yeah. Just a second.

BY MR. FROCKT:

Q In fact, Mr. Campbell, you have worked in
factories before, haven't you?

A Right.

Q And men will talk about women, won't they?

A Right.

MARY BURGHER

347

a witness called by and on behalf of the Respondent, being
first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. RECTOR:

348

Q Mary, do you know John Haywood?

A Yes, I do.

Q Did you ever have any conversation with him
during working hours in the shop?

A Yes, I did.

Q Could you tell us about it?

349 A Well, it was a year ago August, I'm pretty sure, but the date I don't know, and I were back on the bending machine bending tubes, and of course I didn't know John very well because I had just come back in to work from being sick, and he says to me, he said, "Did you know that I had been in prison?"

And I said, "No."

And just like that. And so he said to me, "You know," he said, "I haven't kissed a woman," he said, "for 23 years". And he said, "I haven't been with a woman for 23 years either."

I just took off. I got kind of scared.

Q Mary, are you familiar with the elbow machine?

A Yes, sir.

Q Did you run it for any period of time?

A I beg your pardon?

Q Did you run the elbow machine for any period of time?

A Oh, I've run it for years off and on, five days, five days, you know, a week, nine hours a day, I've run it.

Q A week?

A Yes.

Q For many weeks?

A Oh, many weeks.

Q Is there anything difficult about it?

A Not to me there isn't. I'd rather do that than something else.

351

Q Well, what happened when it was pushed apart? Did it cause any damage to anything, or do you know?

A There was something that happened to the elbow machine, I don't know what.

Q You don't know?

A No, I don't know what it was.

Q Now, were you present in the lunchroom when Mr. Hollander was talking to Claudine Tackett?

A Yes. Mr. Hollander went up in the lunch area where Claudine was, and I went up there, too, and Mr. Hollander told her that he didn't have anything else for her, and she just rang out her card and went home. She acted like she was very angry.

Q She was angry?

A I beg your pardon?

Q She was angry?

A She acted like she was.

Q And she rang her card out?

A Yes, she did.

Q Have you ever seen her in the plant since?

A No, I haven't.

Q Mary, were you present at a meeting in the office

352 on April 19th when Mr. Wilson came into the office to talk to Mr. Hollander?

A Yes.

Q Could you tell us what transpired?

A Well, I wasn't in there when he first came in. I was in there afterwards. And I was in there when Mr. Hollander told Mr. Wilson to go get Phyllis. She was out in the car.

Q You came in about that time?

A Yes.

Q And did he go get Phyllis?

A Yes, he did.

Q And could you tell us then what Mr. Hollander said to Phyllis when she came in?

A He asked her why she hadn't phoned in, or called, or been in to work. And she said that she had had a phone call that she had been fired, but she said -- I forget just how she worded it, but she said that she had had a phone call from Mr. Janetzke that she had been fired, but she had informed him that she had already quit.

Q did you hear anything else?

A I beg your pardon?

Q Did you hear anything else? Did anything else transpire?

A Oh, let's see. No. Only what Phyllis said about

353 Connie McGoon. She laid in on her. She was going to knock her on her --

Shall I say it, sir?

-- a-s-s.

Q What did she say?

TRIAL EXAMINER: What did she say?

A A-s-s.

BY MR. RECTOR:

Q I didn't hear that.

A Ass.

Q I want the whole sentence. What did she say?

A She said that if Connie McGoon lies on her when she was supposed to have pushed Connie into the machine she was going to knock Connie McGoon on her ass.

I'm sorry, I didn't want to say it.

Q Who else was present?

A Well, Marjorie was in there, and Patty Lewis, and myself.

MR. RECTOR: No more questions.

CROSS-EXAMINATION

BY MR. FROCKT:

Q Now, first, concerning the Wilsons and their conversation which you overheard, for what reason were you called in to overhear this conversation? Why were you in the office?

354

A Why was I in the office?

Q Yeah.

A Mr. Hollander wanted me to be in there.

Q Did you say anything during the conversation?

A Did I say anything?

Q Yes.

A Not to my knowledge.

Q Then did --

TRIAL EXAMINER: Do you know why Mr. Hollander called you in the office at the time?

THE WITNESS: Well, I imagine he wanted a witness.

BY MR. PROCTER:

Q Now, is it a fact that during this conversation they discussed -- well, didn't Mr. Hollander right at the very beginning of the conversation tell Mrs. Wilson that it didn't matter, after this first exchange, that she called in, it was an automatic quit anyway?

A It was an automatic quit anyway.

Q Did Mr. Hollander tell Mrs. Wilson that right at the beginning of the conversation?

A Yes.

362

Q All right. Fine. Now, you said you have run the elbow machine.

A Yes, sir.

Q All right. Of course we know from the prior hearing that you are an excellent employee now, and that you have run it for as long as nine hours a day.

A Yes, I have.

Q Now, which side of the machine do you work on when you have run it for nine hours?

A I've worked both sides.

Q Not at once.

A No, sir; not at once; absolutely not.

Q Okay. Now, you don't -- When you operated the machine you also operated it with relief, have you not?

A Yeah, when you had to go to the restroom, or anything like that.

Q Well, you've also operated it for half a day at a time, have you not?

A Oh, I've operated it just maybe one or two hours.

Q What?

A I've operated it just one or two hours, and then Mr. Hollander has put somebody else on it and put me on something else to do.

Q And hasn't there also been the procedure where two girls actually operate the machine even though --

MR. FROCKT: Well, let me restate the whole question.

BY MR. PROCKT:

Q Where'd two girls operate the machine, one operates it in the morning and one in the afternoon, and the other one that worked the afternoon operated it the next morning, and then the other girl operates it the next afternoon? There is
364 a procedure such as that. Right?

A They interchange, yes, sir.

Q And have you been part of this procedure?

A I'd go over and help them out, start it up in the morning when they're busy doing something else.

Q And for what reason -- When did this procedure start as far as rotating people?

A Oh, they've been doing that for quite some time.

Q That's right.

367

HAZEL WARD

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

TRIAL EXAMINER: Be seated, please.

DIRECT EXAMINATION

BY MR. RECTOR:

368

Q And do you recall training a Pauline Kesser?

A Yes, I did.

Q Could you tell us about it?

A Mr. Hollander asked me on the morning that he brought Pauline back to my machine if I would train her for

the job, and I told him I would.

So Pauline -- He introduced her to me, and so I started to train her. She was an excellent worker. She caught on faster than any girl I've ever trained for the machine, and I've trained quite a number of girls.

CROSS-EXAMINATION

370

BY MR. FROCKT:

Q Now, you said she was an excellent worker. Right?

A Yes.

Q But that this -- How often did she carry this coffee? You said she did it. Was it every day?

A Well, four or five days.

Q Out of the next two weeks she worked?

A Yes.

Q And did you ever tell her she shouldn't do that?

A No.

Q Did you ever report this to Mr. Hollander?

A Yes, I did.

Q And when did you report this to Mr. Hollander?

A About a couple days, or three days after she started it.

Q And that was how long before she was discharged?

A I don't know.

Q Well, if she worked there less than a month it would have had to have been -- It wasn't during the last

week she worked there, was it, that you first reported this to Mr. Hollander?

371

A No.

Q Did you report it again to Mr. Hollander?

A Yes.

Q And how often did you report this?

A Well, I don't know, two or three times, because I had other jobs that I had to get back to to running.

Q To your knowledge did Mr. Hollander take any action to warn Mrs. Messer of this?

A No, I don't know what Mr. Hollander did.

373

Q Now, you reported that Pauline Messer was taking time off to press this coffee, that was affecting her production, right, you reported this to Mr. Hollander?

A. TRIAL EXAMINER: She has testified to that.

BY MR. PROCKT:

Q Did you also report the men who she was giving the coffee to?

A No.

Q All right. Now, you've testified there were men that came to her machine during the day and talked to her, also. Who was that?

A The boy back there - David, I believe is his name, and Kenny Kleinert, or something, that works over at the factory, and one other guy, I don't know his name.

374

JOSEPH HOLLANDER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

TRIAL EXAMINER: Be seated.

DIRECT EXAMINATION

BY MR. RECTOR:

386 Q Now, who caught this machine running with these parts in it after he left?

A I believe it was on Friday he left the machine running. Larry Hollander saw it, and he called my attention to it, and he asked me if the guy was still there or not.

388 Q Well, then, what did you do about Mr. Leffler?

A Oh, I told my father, Mr. Irvin Hollander, what he had done, and he called him in the next day.

Q Was the next day Saturday?

A Saturday.

Q All right. Now, did Mr. Leffler come in that day?

A Yes, he did.

Q What happened when he came in?

A I was in the office at that time, and I think I was the one that saw him first, and I told him my father, Mr. Hollander, wanted to talk to him.

So I called my father, and my father, myself, Larry Hollander and David went into my father's office.

Q Well, now, what was the conversation between you and Leffler?

A Well, I told him what had happened the day before. I asked him about it. I also talked to him about the way he had been running the job, because - like - well, when I would come in during the week, well, he was always in trouble on the job, he couldn't get any production out because -- It was a simple process. All he had to do was remember that every fifteen minutes he had to put soap in it. So he'd forget about this. And then that would cause the parts to get worse than what they were, and it would take longer to process it.

So he had been having this trouble all along. And I told him about all the things that I thought he was doing wrong. And - oh, I told him about when he first come there I asked him, I had showed him how to put the parts in the tumbling barrel, that he was supposed to push them down into the ceramic media. So a couple times when I came back there he was tossing them in. And this would also nick them up by throwing them against each other. He just wasn't careful with them. I called hi attention to this - oh, three or four times while I was there.

So I told him all the reasons why I didn't think that he was working out. I told him when I come back there, when he was sanding the jacks - well, it's a vertical sanding

belt. He'd take one of these jack bodies, it's about a foot long, and he would just be resting there looking all over the place while he was doing it. Well, he just didn't seem to have his mind on what he was doing.

I told him this. And he told me, he said, "Well, maybe you're right." He said, "I've got a lot of things on my mind right now." And he went into talking about all what his problems were.

Q What were his problems?

A Well, he said his wife had just left him, or he had left his wife; his child was up for adoption. That was one thing. Then he talked about how bad he needed the job, that he needed the money because there was a suit filed against him in a traffic accident he was involved in. So there was about \$300,000.00, something like this.

He talked about his troubles with the police. He said he had been arrested for stealing a car; he said he and his wife had been arrested for passing bad checks; he talked about everything under the sun why he couldn't keep his mind on what he was doing.

Then he started talking about his hands. Well, I told him - I saw him like he was in a daze like, he'd just stand there looking all over the place. He said - well, that's when he brought up about his hands. Well, when he grabbed parts tight to push them against the sanding belt

he said sometimes his hand would like fall asleep. And I asked him if that had ever happened before, and he said it had happened over at Chrysler Airtemp when he had worked over there. He was running a spot welder, and he had gotten his hands - he had gripped the part and he couldn't move his hands, and the welding electrode came down on his hands and he was injured over at Chrysler that way.

391 So he talked about -- he said maybe he couldn't do these jobs, we hadn't tried him out that much. He asked me if I would put him on a punch press, possibly. He had run that before, and possibly he could work out on that.

Well, I told him if he was having that kind of trouble it would be crazy to put him on a punch press where he would even be in more trouble with his hands.

Q Well, he was a new employee anyway, wasn't he?

A He had been there about two or three weeks.

Q Then who discharged him, your father or you?

A My father did.

* * *
CROSS-EXAMINATION

BY MR. PROCKT:

392 Q Now, when you and Mr. Jeffler and your father were discussing on this Saturday morning, isn't it a fact that when you told him he was doing the job not as instructed that Mr. Jeffler told both of you that four different people had told him to do it four different ways and he was doing

it the way he did it last, the way he was told to do it last. Didn't he say that?

A. No.

Q. He never said that?

A. He didn't say that, but he did say something along those lines.

Q. Okay. Now, when did you inform your father of this problem with him, was it Friday night or Saturday morning?

A. There were two occasions I told him about it.

Q. Well --

A. The --

Q. Go ahead -- I'm sorry.

A. Well, the week before I told him. This was the second week that David was there, and I told him I didn't think David was working out then, that he couldn't take instructions.

Q. Uh huh.

A. And the following Friday night I did, the night he left the barrel running.

Q. And you and your father discussed what to do about him. Is that correct?

A. Yes.

Q. And what was the result of that discussion?

A. Well, I told him what had happened, and I said,

"I thought you ought to know about it."

And he said, "Well, if he's working out that way," he said, "I can't see any reason to keep him any longer."

Q So your father had made up his mind to discharge Leffler when he called him in Saturday morning. Right?

A Yes. That was the first thing he told him, that we couldn't use him any more.

394

IRVIN HOLLANDER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

TRIAL EXAMINER: Be seated, please.

DIRECT EXAMINATION

BY MR. RECTOR:

Q Will you state your name and address for the record, please?

A Irvin Hollander, 30 Knollview Place, Dayton.

Q And what position do you hold with the Tiideo Products Company?

A I am President of Tiideo Products.

396

Q I call your attention to No. 5 where it says that let me have it again -- "Soliciting or collecting contributions for any purpose whatsoever, on company premises, without the approval of the management."

397

Now, you say this has not been changed over the years?

A. That's right.

Q. Well; 25 years ago this rule applied to the premises of the company, did it not?

A. That's right.

Q. Did you know, or do you know that today it does not apply to on the premises, only company time?

MR. JANETZKE: I didn't get the last part of the question.

[Question read.]

A. Well, that's true.

BY MR. RECTOR:

Q. But you've never changed it?

A. No, I haven't really given it that much thought.

Q. Now, when --- Did you say you posted those rules after the other hearing, too?

398

A. They were on the wall at various times. They were torn off quite a few times. Sometimes I only had part of those rules on a little 3 x 5 cards, and then after we had this fire two years ago this month in fact we lost everything that was on the wall, and I just neglected to put them on immediately. And I finally reposted them, - oh, I think it was last October or November.

Q. Did you post them following this last hearing?

A. That's right.

Q. Why did you post them following the last hearing?

A Well, things were getting out of hand.

Q What do you mean they were getting out of hand?

A Well, it seems as though after the last hearing some of the people didn't care whether they worked, got the job done, gallivanting all over the place, doing everything but running their job, and I had to do something to get a little order in the place, so I reposted these. I framed them in tape on the bulletin board, and it's been there since.

TRIAL EXAMINER: Can you give a more specific date?

THE WITNESS: I couldn't honestly. I think it was either October or November of last year. I really don't know what date it was. There was so many things goin on I finally decided to hang them back up again.

399

BY MR. RECTOR:

Q Now, the hearing was in January. Does that help you?

A Wait a minute. It was after the hearing then.

Q That's what I mean.

A Yeah.

Q Your testimony is you posted them after the hearing?

A It could have been a month or two after the hearing.

Q Was it that long after the hearing?

A About a month or two after.

TRIAL EXAMINER: Can Counsel agree on the date they were put up?

MR. FROCKT: I think we have alleged the end of January, the first part of February, somewhere in there.

400

alleged.

TRIAL EXAMINER: Well, approximately is that the time?

MR. FROCKT: That's correct, approximately January, February, 1968.

TRIAL EXAMINER: Next question.

BY MR. RECTOR:

Q Now, Mr. Hollander, there's been some testimony about whether or not you discharged or whether or not Phyllis Wilson quit.

Now, could you tell us what happened?

A I was called into the office -- I'll start again. I had a message on my desk from Mr. Wilson, I didn't know who it was, the message was taken during the day. When I came into the office I went to my office and called him, and he identified himself as Phyllis Wilson's husband. He said, "I would like to come out and get Phyllis's check."

I says, "Fine. Come on out." There might have been a few other words said, I don't know.

So he come out Friday, and Marge called me in the office when he came in, and he was standing out in the middle of the floor, and I asked him, I said, "Where's Phyllis?"

He says, "She's out in the car."

I said, "Why don't you bring her in?"

401

He said, "She said you fired her."

I said, "Now, wait a minute, let's get something straight here. You get Phyllis in here and let me hear that from her."

So he did. He went out and got her. And at that time we were already into my office, the front office, and I asked her one question and that was, "Did I say anything to you when you were here Tuesday?"

She said, "No."

I said, "If I didn't say anything to you how could I have fired you?"

Then she became very talkative. Her talk was quite comical. And she said, "Well, Mr. Janetzke called me and told me that I was fired."

I said, "Well, he knows more about it than I do then."

And she said something to the effect, "Well, it didn't make any difference anyway, I quit Monday."

Q Now, there's been some testimony about Claudine Tackett refusing to run the elbow machine.

Would you help us out on that?

A Well, she was off, I think it was two days the week previous. She only worked on that machine for two days. I think it was either Tuesday or Wednesday, and she was off Thursday and Friday. She reported back then the

402 following Monday. And normally I'm out on the floor, and most of the employees walk up to me and want to know what jobs they're going to run. And it was her turn next. And she asked me what was she going to run, and I told her to run the elbow machine.

And she says, "I won't run it."

I said, "Why not?"

She says, "Well, if I'm back there and I get sick you won't relieve me." or words to that effect.

So I asked her, I said, "Are you sick?"

She said, "No."

I said, "Are you planning on getting sick?"

She says, "I might."

I said, "Well, I wouldn't worry about that, you're not sick now."

So she had a very hostile attitude, so I said, "Well, that's all I have. Come on over to the eating department here and we'll talk about it."

Well, actually she started to walk away, and she rang her card out about 2:02, 2:03.

Q Before she rang her card out, in the restroom area did you talk to her?

A I don't know whether it was before she rang her card out or after. But I tried to talk to her, and I saw she didn't care about doing anything. And I said, "Well, that

403 all I have."

Q And then?

A Then she left.

Q She left then.

A Yes.

Q Then when was the next time you saw Mrs. Tackett?

A About a week and a half later.

Q Tell us what happened then.

A I was called to the office by Miss Pratt. I was out in the shop. She said, "There's someone out here giving me a rough time". And she told me part of what happened about him barging into the office and he wouldn't get out.

I said, "All right, I'll be right out."

Well, she told me that Claudine was there. So I surmised this man, whoever it was, but I didn't know at the time he was with her. So on the way out I had some of the girls come with me, I think Patty and -- no, a fellow there by the name of Jack, he happened to be standing there, and I asked him to come out, and Marge, I don't remember who else was there. So I walked in, and I said, "What can I do for you?"

He said, "I want Claudine's check."

I said, "Who are you?"

He said, "I'm her father."

I said, "I can't give you her check." I said, "I

404 want to talk to Claudine." I said, "Will you please step outside?"

He started to using foul language, threatened me. I saw I wasn't going to get anywhere, so I walked away from him. I wasn't going to argue with him. And I came back and he was still there.

I said, "Now, you get out of here or I'll call the police."

And he got very hostile. I said, "Now, you go on outside. I want to ask Claudine a question," I said, "and then she can have her check and go."

Well, he refused to close the front door. So I refused to talk to Claudine while he had the door open. Well, he finally agreed, making quite a bit of rumpus outside, and invited me outside to a fight.

And I asked Claudine one question. I said, "Where have you been?"

And she said, "Well, you told me you would call me", And that was a lie.

So I said, "Claudine, you are a liar. Now, you wait here just one minute." I went to my office, and I pulled out the discharge ticket I had already made out because she refused to run the job, and I got her check at the same time. I come over and I handed her the discharge. I said, "Now, this makes it official. You are discharged." And I

405 gave her her check, and she went out.

* * *

CROSS-EXAMINATION

406

BY MR. FROCKT:

* * *

412

Q Now, I ask you, did Mrs. Wilson on two separate occasions tell you that "If I had to run those machines I will quit"?

MR. RECTOR: Objection, unless he names the machines, or designates the machines.

MR. FROCKT: That's what he said, and -- well, I'm not going to argue.

TRIAL EXAMINER: Overruled.

BY MR. FROCKT:

Q Did you in fact make that statement? Well, I ask you to look at it again. Did you in fact make that statement?

A Are you asking me if I made that?

TRIAL EXAMINER: Just ask him if he wishes to revise his previous answer.

BY MR. FROCKT:

Q All right. Do you wish to revise your previous testimony?

A No, no.

* * *

414

Q Did you talk about the tarpaulin incident?

A I think that was brought up. I don't recall too much about that.

Q During that conversation didn't Mrs. Wilson accuse you of harrassing her?

A Well, I think she said something about harrassment, and I asked her what she meant by it.

Q Yeah. And she told you about the elbow machine, why she didn't like it, all that. Right?

A Yeah, but that was afterwards.

Q After what?

A After she quit.

415 Q And towards the end of the conversation didn't you tell her that, ask her when she was coming back?

A No, I didn't say it that way.

Q What did you say?

A I said, "So you're not coming back?", sort of a question. She had made up her mind to quit so I said, "So you're not coming back?" And she said, "No."

416

PAULINE KISSER

a witness recalled in rebuttal by and on behalf of the General Counsel, resumed the stand, and further testified as follows:

TRIAL EXAMINER: She is simply going to reaffirm her prior testimony?

MR. PROCKT: No. I am not going to do that.

DIRECT EXAMINATION:

BY MR. PROCKT:

Q Now, Pauline, do you know Barbara Tipton?

417 A I know her first name.

Q Was that the same lady who testified this morning about the elbow machine?

A Yes, sir, it was.

Q And testified that she liked working on the elbow machine from the first day that she worked on it?

A Yes, sir.

Q Did Barbara Tipton ever make a statement to the contrary to you?

A Yes.

Q Tell us about that in your own words. Now, just when did it happen?

A It happened in April, right the same day that she got put on the machine.

Q The same day that she --

MR. RECTOR: The same day that she got what?

THE WITNESS: Put on the machine.

MR. RECTOR: Oh.

BY MR. FROCKT:

Q And how do you know she was on the machine?

A Because Phyllis Wilson wasn't there, and it hadn't been run for two days.

Q And where were you working at this time?

A I was working on the other molding machine.

Q All right. Tell us where this conversation took

418 place.

A Well; we had lunch together that time, the two people that worked on the machine, molding machine had lunch together.

Q All right. In your own -- I'm sorry.

A And I asked her how she liked the molding machine, and she said she really didn't like it, it was hard work and she hoped she didn't have to stay on it very long.

Q When you're talking about the molding machine, which molding machine are you talking about?

A The elbow machine.

MR. PROCKT: No further questions.

TRIAL EXAMINER: Any cross --

I'm sorry - Mr. Janetzke, do you have anything of this witness?

MR. JANETZKE: Yes.

FURTHER DIRECT EXAMINATION

BY MR. JANETZKE:

Q Pauline, could you tell us if on the elbow -- if on the machine you were running at the time of your discharge, at the time of your termination, could you tell us if at the time of your termination on the machine you were running whether it was necessary to take a manual count or whether there was some other type of count made of the pieces

419 run?

A. No, sir. There's an automatic count on the machine.

Q. And it would not be necessary -- Would it or would it not be necessary for someone to stand there by you and watch to see the quantity of pieces you are turning out?

A. No, sir, there would not.

421

JOHN HAYWOOD

a witness recalled in rebuttal by and on behalf of the General Counsel, resumed the stand, and further testified as follows:

DIRECT EXAMINATION

BY MR. FROCKT:

Q. You're under oath.

A. Yes.

Q. Mr. Hayward, you've been here during the entire trial, have you not?

A. Yes, I have.

422 Q. And today did you hear testimony as concerning David Leffler, and what Leffler should have done, and what you should have done as far as the cycle of that machine at the end of the day?

A. Yes, I did.

Q. Now, have you ever operated the machine which Leffler operated?

A. Yes, I did.

Q When was that?

A Well, when I was -- when I went back to work in January, why, it was my job to run that polishing machine, and also the sanding machine, the sander.

Q All right. Now, it is a fact, is it not, that you do have time in between these cycles just as Mr. Hollander stated?

A Yes, sir.

Q And you do operate the sander in between the cycles?

A Yes, sir.

Q Right?

A That's right.

Q And you did this?

A Yes, I did.

Q All right. Now, as far as the end of the day, what did you do at the end of the day, could you tell us what his instructions to you on that was -- were, excuse me?

423 A Well, at the end of the day if I had a load coming out at, say 4:10, I would go ahead and pull it out, and Joseph Hollander or Mr. Hollander would come and tell me to leave the load in, that one of the night men would take it out, either himself or one of the night men.

Q When were these instructions given to you?

A Almost at quitting time.

Q. I mean -

A. Between 4:00 and 4:30.

Q. Well, when? What period during the year were you told this? I'm trying to get the date.

A. Oh, that was after I was recalled back to work and went back to work on January the 8th.

Q. And when did they first tell you to do this?

A. Well, there would be some castings to be run and polished, it would be quite often, on several nights.

CROSS-EXAMINATION

BY MR. RECTOR:

425 Q. Now, I believe you said that Joe Hollander gave you the instructions.

A. Yes, on quite a few occasions Joe did.

Q. On quite a few occasions, you say?

A. Yes.

Q. Now, you heard the testimony of Joseph Hollander here a little bit ago concerning Leffler, didn't you?

A. Yes, I did.

Q. Was his instructions to Leffler any different to what his instructions were to you?

A. Yes, they were; yes, they were.

Q. They were?

A. Yes, sir.

[GENERAL COUNSEL'S EXHIBIT 2]

RULES AND REGULATIONS

THIDEE PRODUCTS

Minor Offenses

1. Habitual failure to be at the work station ready to begin work at starting time.
2. Habitual preparation to leave work station before the scheduled lunch period or end of the shift.
3. Disregard of safety rules or common safety practices.
4. Horseplay.
5. Soliciting or collecting contributions for any purpose whatsoever, on company premises, without the approval of the management.
6. Creating or contributing to unsanitary conditions.
(Good Housekeeping)
7. Garnishments.
8. Performing work of a personal nature either for yourself or others, without consent of the management.
9. Distribution of literature, written or printed matter of any description on company property, not incidental to company business.
10. Leaving the department, during working hours, without permission of the management, except on regular business connected with employees work.
11. Failure to perform work as directed.
12. Inefficiency.
13. Entering the plant at times other than the employees scheduled work shift.
14. Reporting for work under the influence of alcohol.
15. Failure to report accident or injury of any kind.
16. Making excessive scrap.
17. Abuse of rest periods, coffee breaks.
18. Carelessness.

Employee committing minor offenses shall be warned. Two violations of a minor offense shall constitute a major offense.

Check and advised
J. Hollander

Major Offenses:

1. Leaving the plant during working hours without permission from your Foreman.
2. Posting or removing Notices, Signs, or Writing in any form on Bulletin Boards, or Company Property at any time without the specific authorization of the Management.
3. Deliberately restricting production.
4. Habitual absence without reasonable cause.
5. Intentionally ringing the clock card of another or instructing another employee to do so.
6. Threatening, intimidating, coercing or interfering with fellow employees at any time.
7. Habitual failure to ring own clock card.

Employees committing a major offense shall be subject to a three day lay-off. Two violations of a major rule shall constitute an intolerable offense.

Intolerable Offenses:

1. Falsification of personnel or production records.
2. Absent three (3) or more days without notification.
3. Deliberate destruction or abuse of company property, tools, equipment or property of employees or others in any manner.
4. Fighting on company property at any time.
5. Theft.
6. Gross insubordination.
7. Drinking or possession of intoxicating liquor or any alcoholic beverages on company property at any time.
8. Smoking in other than designated areas.
9. Immoral conduct or indency.

Employee committing an intolerable offense are subject to dismissal.

Any person or persons performing any act or acts detrimental to the welfare of the employees or the company, or both, not specifically covered in the rules and regulations will be dealt with in an appropriate manner by the Management.

[GENERAL COUNSEL'S EXHIBIT 4(a)]

STANDARD FORM 4329
MAY 1962 EDITION GSA GEN. REG. NO. 27

EMPLOYEE WARNING NOTICE

1st Notice ☒
2nd Notice ☐

| | | | |
|--------------------------|-----------------|------------------------|-----------------|
| NAME
Claudine Tackett | Check No.
41 | Department
Plastics | Date
3/20/68 |
|--------------------------|-----------------|------------------------|-----------------|

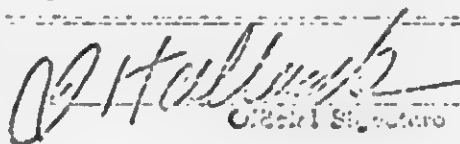
NATURE OF VIOLATION

REMARKS

- ☒ Defective Work
☐ Safety
☐ Conduct
☐ Lateness
☐ Absence
☐ Attitude
☐ Housekeeping
☐ Disobedience
☒ Carelessness

Violation of Minor Rule
 # 18 Next violation of
 a minor rule shall result
 in a 3 day layoff.

Signature of Foreman or Supervisor



Official Signature

4/11

[GENERAL COUNSEL'S EXHIBIT 4(b)]

STANDARD FORM 4329
MAY 1962 EDITION GSA GEN. REG. NO. 27

EMPLOYEE WARNING NOTICE

1st Notice ☐
2nd Notice ☒

| | | | |
|--------------------------|-----------------|------------------------|-----------------|
| NAME
Claudine Tackett | Check No.
41 | Department
Plastics | Date
4/17/68 |
|--------------------------|-----------------|------------------------|-----------------|

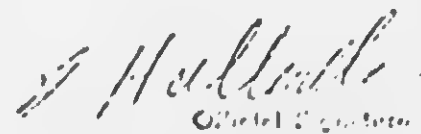
NATURE OF VIOLATION

REMARKS

- ☐ Defective Work
☐ Safety
☐ Conduct
☐ Lateness
☐ Absence
☐ Attitude
☐ Housekeeping
☐ Disobedience
☒ Carelessness

Violation of Minor Rule #18. This is the
 second violation of a minor rule which
 constitutes a 3 day lay off.
 Violation packed 10 ft. hose in a box
 marked for 15 ft. hose.

Signature of Foreman or Supervisor



Official Signature

4/12

[GENERAL COUNSEL'S EXHIBIT 4(c)]

STANDARD FORM 4328
MATTICK PRINTING CO. - CHICAGO

EMPLOYEE WARNING NOTICE

1st Notice ☐2nd Notice ☐

| | | | | | | | |
|---|---------------------------------------|-----------|----|------------|------------|------|--------|
| NAME | Claudine Tackett | Clock No. | 41 | Department | Production | Date | 5/6/63 |
| NATURE OF VIOLATION | REMARKS | | | | | | |
| <input type="checkbox"/> Defective Work | Violation # 6 Gross insubordination. | | | | | | |
| <input type="checkbox"/> Safety | | | | | | | |
| <input type="checkbox"/> Conduct | Refused to operate a machine you were | | | | | | |
| <input type="checkbox"/> Laziness | assigned to. | | | | | | |
| <input type="checkbox"/> Absence | | | | | | | |
| <input type="checkbox"/> Attitude | | | | | | | |
| <input type="checkbox"/> Housekeeping | | | | | | | |
| <input type="checkbox"/> Disobedience | | | | | | | |
| <input type="checkbox"/> Carelessness | | | | | | | |
| <input checked="" type="checkbox"/> Insubordination | | | | | | | |

C. J. Tackett
Signature of Foreman or Supervisor

Official Signature

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TIIDEE PRODUCTS, INC.

and

INTERNATIONAL UNION OF ELECTRICAL,
RADIO & MACHINE WORKERS, AFL-CIO-CLC

Cases 9-CA-4440
9-CA-4488
9-CA-4536
9-CA-4563

TRIAL EXAMINER'S DECISION

Statement of the Case

GORDON J. MYATT, Trial Examiner: In Case 9-CA-4440 the original charge was filed on September 21, 1967,¹ by International Union of Electrical, Radio & Machine Workers, AFL-CIO (hereinafter called the Union). Amended charges in this case were filed on September 22 and October 23, respectively. On November 14, Complaint and Notice of Hearing issued alleging that Tiidee Products, Inc. (hereinafter referred to as Respondent), had committed violations of Section 8(a)(1) and (3) of the Act by unlawfully interrogating employees about their activities on behalf of the Union, by threatening to cease operations if the Union became the employees' bargaining representative, by threatening to take reprisals against employees if the Union became their bargaining representative, by discriminatorily selecting employees for layoff, and by discriminatorily discharging employees because of their support of the Union.

In Case 9-CA-4488 the original charge was filed by the Union on October 23, and amended charges were filed on November 6 and 30. On

¹All dates herein refer to 1967, unless otherwise indicated.

December 14, Complaint and Notice of Hearing issued based on these charges alleging that the Respondent committed additional violations of Section 8(a)(1) and (3) of the Act. This complaint alleged that the Respondent discriminatorily changed terms and conditions of employment of employee-supporters of the Union, that the Respondent discriminatorily selected employees for layoff, and discriminatorily discharged an employee for engaging in activities on behalf of the Union.

[2] On November 30, another charge was filed by the Union in Case 9-CA-4536, and on December 14, Complaint and Notice of Hearing issued. The Complaint alleged that the Respondent unlawfully refused to bargain with the Union as the certified representative of its employees in an appropriate unit. On December 22, the Union filed an additional charge in Case 9-CA-4563, and on December 29, Complaint and Notice of Hearing issued against the Respondent alleging further violations of Section 8(a)(1) and (3) of the Act. All of the above cases were consolidated for purposes of trial by an Order issued by the Regional Director for Region 9 on December 29. This matter was tried before me on January 16, 17, and 18, 1968, in Dayton, Ohio. All counsel and representatives were afforded full opportunity to be heard and to introduce relevant evidence. Briefs were submitted by all of the parties, and they have been fully considered by me in arriving at my decision.

Upon the entire record in these proceedings, including my evaluation of the testimony of the witnesses based on my observation of their demeanor and on the relevant evidence, I make the following:

Findings of Fact

I. Jurisdictional Findings

The Respondent is an Ohio corporation engaged in the manufacture of metal and plastic parts for mobile homes and travel trailers and maintains its plant and principal place of business in Dayton, Ohio. During the past calendar year, the Respondent manufactured and shipped goods and products valued in excess of \$50,000 directly from its plant in Dayton, Ohio, to points located outside the State of Ohio. On the basis of the foregoing I find and conclude that the Respondent is an employer within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organization Involved

International Union of Electrical, Radio & Machine Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. *The Respondent's Refusal to Bargain*

The undisputed evidence shows that the Union commenced its organizing campaign in July. A petition was filed on August 1 and the parties entered into an Agreement for Consent Election on September 1.² The Agreement for Consent Election provided, in part:

[3] SECRET BALLOT.- An election by secret ballot shall be held under the supervision of the said Regional Director, among the employees of the undersigned Employer in the

²The petition (Case 9 RC 7362), the Agreement for Consent Election, the Tally of Ballots, Respondent's Objections to the Election, and the Report on Objections and Certification of Representative are in evidence as General Counsel's Exhibits 1(h) through 1(ii).

unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented for the purpose of collective bargaining . . . Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the applicable procedures and policies of the Board, provided that the determination of the Regional Director *shall be final and binding* upon any question, including questions as to the eligibility of voters, raised by any party hereto relating in any manner to the election, and provided further that rulings or determinations by the Regional Director in respect of any amendment of any certification resulting therefrom shall also be final. [Emphasis supplied.]

* * *

6. OBJECTIONS, CHALLENGES, REPORTS THEREON.—Objections to the conduct of the election or conduct affecting the results of the election, or to a determination of representatives based on the results thereof, may be filed with the Regional Director within 5 days after issuance of the Tally of Ballots. . . . The Regional Director shall investigate the matters contained in the objections and issue a report thereon. If objections are sustained, the Regional Director may in his report include an order voiding the results of the election and, in that event, shall be empowered to conduct a new election under the terms and provisions of this agreement at a date, time, and place to be determined by him. If the challenges are determinative of the results of the election, the Regional Director shall investigate the challenges and issue a report thereon. The method of investigation of objections and challenges, *including the question whether a hearing shall be held in connection therewith, shall be determined by the Regional Director, whose decision shall be final and binding.* [Emphasis supplied.]

The appropriate unit for purposes of collective bargaining was described as:

All production and maintenance employees at the Employer's Dayton, Ohio, plant, excluding all office clerical employees, professional employees, technical employees, guards and supervisors as defined in the Act.

On September 14, a secret-ballot election was held which resulted in 19 votes for the Union, 6 against, and 3 challenged ballots.³ The Respondent filed timely objections to the election, stating in essence: (1) that the Union distributed a leaflet to the employees on the day of the election "which specifically changed the election issues established by [the] N.L.R.B."; and (2) that the Union violated the Consent Agreement by challenging employees who were on the eligibility list. The Regional Director conducted an administrative investigation, and on the basis of his findings, issued a report overruling the Respondent's objections and certifying the Union as the exclusive bargaining representative of the employees.

On November 10, the Union's attorney directed a letter to Hollander, president of the Respondent, requesting certain information deemed necessary to enable the Union to engage in collective bargaining and requested that a meeting [4] be arranged between the parties as soon as possible. On that same date the Union's attorney addressed a letter to the Respondent's labor consultant suggesting that the parties meet to commence negotiations for a collective-bargaining contract on November 15. Although the Respondent did not reply to either letter, two representatives from the Union, Reese and Brown, and two members from the employees' committee went to the Respondent's plant on November 15, for the purpose of commencing negotiations. Hollander refused to engage in collective bargaining and suggested that the union contingent contact his labor consultant. On November 20, the union president, Lacy, forwarded a letter to Respondent's labor consultant renewing the Union's request for

³The Tally of Ballots indicates that there were approximately 28 eligible voters in the unit.

negotiations and for the information previously sought. On November 22, the Respondent's labor consultant advised the Union's attorney in a letter that the Respondent would not comply with the certification issued by the Regional Director and that the Respondent considered that "the Regional Director acted arbitrarily and capriciously by denying the employer his right to due process." In this letter the labor consultant advised the Union that he could not meet with them "until all litigation is disposed of." The Union renewed its request for negotiations in letters directed to the Respondent's representative on November 27 and December 18.⁴

Hollander was called as an adverse witness by the General Counsel and examined under Rule 43(b). Hollander admitted that he had not bargained with the Union and would not do so because the circulars passed out by the Union on the morning of the election violated, in his judgment, the Board's "24-hour" rule and gave the Union an unfair advantage. He also stated that he would not bargain while the charges were pending against the Respondent. It was also contented that the Regional Director denied the Respondent due process by making an administrative determination concerning the objections to the election rather than affording the Respondent the opportunity of a hearing.

The Respondent's assault on the validity of the Regional Director's certification of the Union as the exclusive bargaining representative of the employees is without merit. The objections were investigated and on the basis of the results of that investigation, a determination was made. Under

⁴The Union submitted a draft of a collective-bargaining agreement and proposals covering pension, health, and life insurance benefits. The Respondent made no reply to the Union's proposals.

the very terms of the Agreement for Consent Election the method of investigation, including the question of whether a hearing shall be held, was a matter which rested solely within the discretion of the Regional Director, and his decision in this regard was final and binding on the parties. It is well settled that a Regional Director's Decision in a consent-election situation will stand in the absence of evidence of "fraud, misconduct, or such gross mistakes as to imply bad faith." *Sumner Sand & Gravel Company*, 128 N.L.R.B. 1368, 1371, *enfd.* 293 F.2d 754 (C.A. 9). Beyond the bald assertion that the Regional Director acted arbitrarily and capriciously, the Respondent has failed to come forth with any evidence whatsoever that would even suggest that the Regional Director's determination should be questioned. Nor does Respondent's claim that it was denied due process alter this conclusion. The Union freely acknowledged having engaged in the conduct which the Respondent cited as objectionable, and there was no factual issue in contention. The claim that a hearing is required under these circumstances is frivolous. "The Constitution protects procedural regularity, not as an end in itself, but as a means of defending substantive interests." *Fay v. Douds*, 172 F.2d 720, 725 (C.A. 2). As the Regional Director's Report on Objections clearly indicates, the Respondent's [5] contentions were thoroughly presented during the administrative investigation and considered in the Report itself. Thus it is evident that a hearing in these circumstances, where no factual dispute existed, would be nothing more than "a senseless and useless formality." *Air Control Products, Inc. v. N.L.R.B.*, 335 F.2d 245, 249 (C.A. 5). See also *Carlisle Paper Box Company v. N.L.R.B.*, 68 L.R.R.M. 2831 (C.A. 3), decided July 17, 1968.

Accordingly, I find that the Regional Director's Certification of Representative is valid, and is final and binding on the Respondent. It follows, therefore, that the Respondent has engaged in and is engaging in conduct in violation of Section 8(a)(5) of the Act by refusing to bargain with the Union.

In addition to questioning the validity of the Certification, the Respondent's letter dated November 22, stated that it would not meet with the Union "until all litigation is disposed of." Pending Board proceedings or pending unfair labor practice charges do not relieve an employer of his statutory obligation to bargain with the collective-bargaining representative of his employees, and the refusal to do so until the proceedings have been disposed of is clear evidence that the employer is seeking to avoid the obligations imposed by statute. I find therefore that the Respondent's refusal to meet with the Union until pending litigation is disposed of constitutes a separate violation of Section 8(a)(5) of the Act. *Greer Stop Nut Company, a division of Kaynar Manufacturing Co., Inc.*, 162 N.L.R.B. No. 47; *Kit Manufacturing Company, Inc.*, 142 N.L.R.B. 957, 971.

I also find that the Respondent committed a further violation of Section 8(a)(5) of the Act by ignoring the Union's request for information pertaining to the employees. The information sought by the Union dealt with existing wages and fringe benefits, and the request for this data by the bargaining representative is presumptively lawful. *Weber Veneer & Plywood Company*, 161 N.L.R.B. 1054, 1056; *Curtiss-Wright Corporation, Wright Aeronautical Division*, 145 N.L.R.B. 152, enfd. 347 F.2d 61 (C.A. 3). The Respondent offered nothing to rebut this presumption, but rather simply refused to deal with the Union in any manner. In these circum-

stances, the conclusion that the Respondent further violated Section 8(a)(5) is inescapable.

B. The Other Unlawful Conduct

1. The events prior to the election

The Union's efforts to organize the employees began in July. Employee Tackett contacted Reese, a representative of the Union, and arranged to have her meet with several of the Respondent's employees at Tackett's home. Shortly after this meeting Tackett and the employees who attended began to distribute authorization cards and solicit signatures from their fellow employees.

Later that same month, the Union intensified its organizational drive by handbilling the employees in front of the Respondent's plant. The evidence indicates that this was the first time that the Respondent's officials became aware of the Union's efforts. A few days after the handbilling, Respondent's president, Hollander, told Donald Gearing⁵ that he did not like unions and "if they got in, he would close the doors" and he and Gearing "would [5] go fishing." According to Gearing, Hollander told him to listen around the plant for talk about the Union. Gearing testified that on another occasion in July, Hollander spoke to him about the Union and stated, "that if the Union got in, only the 'dedicated' employees would work and all of the rest [of the employees] would go." Hollander on the other hand categorically denied all statements attributed to him by Gearing, and testified that it was Gearing who came to him shortly after the hand-

⁵Gearing is alleged by the General Counsel to be a supervisor. His status is treated, *infra*, in this Decision.

billing incident and stated that he (Gearing) would quit if the plant became unionized.

Having observed these witnesses while testifying, and considering Hollander's intransigent and hostile attitude toward the very concept of union representation for the employees and his actions following the representation election, I credit the testimony of Gearing. Hollander's statements to Gearing were consistent with the course of conduct adopted by the Respondent in opposing the Union both during the organizing campaign and after the election.

Hollander also spoke to employee Haywood about the union activity in the plant. Haywood testified that Hollander told him in August that "if there is anything that you can find out [about the Union], I would appreciate it," and that "it would never be forgotten." According to Haywood, Hollander promised that he would be "taken care of," and that he (Haywood) had been in enough trouble and Hollander didn't want to see him get into any more.⁶ Haywood testified that he later reported to Hollander that there were six employees on his side. According to Haywood, Hollander replied that he thought that the people on the assembly table were responsible for the trouble.

Hollander denied asking Haywood to ferret out information about the union activity among the employees. He stated that Haywood volunteered to do so, and he cautioned him to mind his own business. In view of my

⁶Haywood apparently had served a prison term prior to working for the Respondent.

impression of Hollander, and considering his overall conduct in opposing the Union, I credit the testimony of Haywood.⁷

Employee Linton credibly testified that Melvin Hershey, also alleged to be a supervisor,⁸ told him, shortly after the Union handbilled the plant, that the Respondent would not recognize a union and would close down and go fishing. During this conversation Hershey asked Linton if he knew anything about the Union. Linton testified that prior to the election, Hershey called him at home on the telephone and asked him "to talk up the Teamsters" among the employees, and to try to find out which of the employees would object to this Union.⁹ Hershey, who appeared as a witness, denied discussing the Union with Linton, but did acknowledge that he was aware that Linton had formerly been a member of the Teamsters because the employee volunteered that information. On the basis of my observation of these witnesses, I find and conclude that Hershey did in fact make these statements to Linton.

[7] On August 1, a meeting of approximately 12 of the female employees was held in Hollander's office. Gearing complained to Hollander about the women being off the floor because it was interfering with production. He was told not to worry about it as the employees were talking about the Union. When the meeting was concluded, Hollander came out of the office and told Gearing that the employees had voted 11 to 1 to

⁷In addition to the request by Hollander, Haywood also testified that Gearing asked him to find out all that he could about the Union and report back. Haywood stated this request was made in July, and he refused to comply with it.

⁸As in the case of Gearing, the Respondent denied that Hershey was a supervisor. His status will likewise be determined subsequently in this Decision.

⁹It is not clear in this record whether Hershey made this request during their initial conversation in July, or at some subsequent date.

get rid of him. Hollander informed Gearing that he "pushed them too hard" in their work and did not get along with people. Gearing subsequently gathered his tools and left the Respondent's plant.

On August 5, employee Tackett was injured in an automobile accident and remained home for approximately 5 weeks thereafter. During her convalescence Tackett acted in a liaison capacity between the employees and the Union. While at home Tackett received a visit from Hollander, who inquired as to how she was getting along and if she needed any financial assistance. Hollander gave Tackett \$50 to help her along. According to Tackett, Hollander indicated that it was a "gift" from him, but that if she wanted to pay it back, she could do so at her leisure.

During the latter part of August, Mary Burgher, another alleged supervisor,¹⁰ began to solicit signatures from the Respondent's employees on a petition which she was circulating in the plant. She was accompanied on this mission by Ward, another senior employee. The petition was actually a poll by which the employees were to indicate whether or not they wanted an election to determine if they should be represented by a union. In each case the employee was informed by Burgher to sign his or her name and indicate yes or no. Employees Linton, Wells, Virgil Brummitt, William Brummitt, and Graham signed the petition and placed "no" behind their names.¹¹ Several employees refused to sign the petition. These employees were Sawmiller, Morgan, Haywood, and Venters. Venters testified that when she refused to sign, Burgher told her that she had to do so. However, Venters remained adamant in her refusal. Employee

¹⁰Burgher's supervisory status is also in contention, and will be dealt with subsequently herein.

¹¹William Brummitt testified that he was told by Linton that Herschy wanted all employees in the plastics department to sign "no."

Cash testified that when she was approached by Burgher, she indicated that she did not care one way or other about the election and did not sign the petition. Another employee, Cullars, informed Burgher that she wanted more time to think the matter over. She was not approached thereafter by Burgher concerning the petition. Employee Reagan testified that Burgher signed her name to the petition and indicated "no" after her name. Reagan thought the matter over and subsequently went to Burgher and insisted that her name be erased. Employee Wilson signed the petition at the request of Burgher, but subsequently went to Burgher and asked that her name be stricken. According to Wilson, Burgher replied that she (Burgher) was proud to sign her name on the petition.¹² Tackett, at home convalescing while the poll was being taken, was contacted by telephone by Burgher and asked if she would sign the petition. Tackett was noncommittal in her reply and there is no indication that her name was attached to the petition.¹³

[8] Although Hollander disclaimed any knowledge of the petition which Burgher had been circulating, the unrefuted evidence shows that Burgher took the petition into Hollander's office after she had secured the signatures. Burgher testified that she circulated the petition because employee Linton was talking about the Teamsters Union and the Charging Union had passed out literature informing employees that a Board election would be held at the plant. Burgher claimed that she conducted the

¹²There is no indication in the record that Burgher ever deleted Wilson's name from the petition.

¹³During this same conversation Burgher asked Tackett if she knew who among the employees started the union activity and what, if anything, she knew about the Union. In addition to remaining noncommittal about the petition, Tackett professed to know nothing about the Union.

survey to determine how the employees felt about the matter, and that she intended to give the petition to the Board.

After she had polled the employees, Burgher questioned a number of them individually about the Union. The unrefuted testimony shows that on August 31, Burgher asked employee Wells how he felt the Union's campaign was going. Burgher told Wells that she was going to vote against the Union. In another conversation with Wells shortly before September 14, Burgher told him that someone in the shop represented the union members and she wondered who it was. She asked Wells if he was the person, and when he denied it, Burgher stated that she was only "kidding."

During the week preceding the election on September 14, Burgher asked employee Reagan her views on the outcome of the election. This employee told Burgher that she was going to "kill Burgher's 'no' vote." During this same week Burgher approached employee Venters and asked her who was going to be the observer for the Union at the election. Burgher also asked this employee if she knew who started the Union. On the day of the election Burgher sought to get the name of the union observer from employee Wilson. When Wilson replied that she was going to be the observer, Burgher refused to believe her.

Burgher also played a minor role in conversations between Hollander and several employees. Sometime during the latter part of August, employee Jones asked Burgher if she could see Hollander. After Burgher determined that it was possible, she accompanied Jones into Hollander's office. Jones was upset and threatened to quit her job because she was having difficulty with several of the employees in the plant. Hollander asked Jones if she knew who started "this." Jones replied that no one had said anything about the Union to her. Hollander then stated that he had not men-

tioned the word union. whereupon Jones replied, "No, you didn't, but I know what you mean." Hollander then turned to Burgher and said, "She'd be surprised is she knew, wouldn't she, Mary?" Burgher replied in the affirmative. Hollander then informed Jones that "We know a lot more than you think we know." Hollander assured Jones that matters would work out in the plant, and he asked her if she was aware of what had happened to Gearing. When Jones indicated that she had heard from the other employees that Gearing had been fired. Hollander stated, "We have our own way of taking care of troublemakers."¹⁴

A week before the election Burgher came to employee Cash's machine and instructed her to go to Hollander's office. Burgher followed Cash into the office. When they arrived, Hollander informed Cash that he had heard from Burgher that she was brooding over the fact that she had not been given a raise in pay. Hollander told Cash that he could not give her a raise while the matter with the Union was pending because it would look as if it were a bribe. Hollander promised her a 10-cent-an-hour increase once the "trouble" was over. As Cash was leaving Hollander's office he told her that the union people were a bunch of "damn Communists." Hollander also showed Cash some of his records indicating the amount of profit he was making on table legs which were being produced in the plant. Later that day, Hollander stopped [9] by Cash's machine and asked her if she had learned anything from their conversation that morning. When Cash indicated that she had, he replied, "Well, some people think that grass is always greener on the other side, until they get there."¹⁵

¹⁴Jones' version of this conversation was unrefuted in the record.

¹⁵Cash's testimony concerning her conversation with Hollander is not controverted in the record.

2. The events after the election

As previously noted, the election was held on September 14, and the Union received 19 votes with 6 votes cast against union representation and 3 ballots were challenged. Tackett was the employee observer for the Union during the election. After the Board agent announced the results to the assembled employees, Hollander grabbed Tackett's arm and said, "Do you mean . . . after all that I have done for you! I gave you \$50 to save your house." Hollander then asked Tackett if she had anything to say to the employees and repeated this statement until Tackett then turned and announced the results of the election again.¹⁶

The following day when the employees reported to work, shortly after 7:30 a.m., they found the plant locked. A notice was posted on the door stating that the doors would not be opened until 7:45 a.m. Normally the doors to the plant were open when the employees arrived. When employees Tackett and Virgil Brummitt reported to the plastics department, they were instructed by Hershey to grind up the 10-foot sections of hoses which the employees intended to prepare for shipment. Both Tackett and Brummitt protested that the hoses were not defective and should not be destroyed.¹⁷ Hershey, however, insisted that the hoses had to be scrapped.

¹⁶Hollander testified that the Board agent made his announcement in such a low tone that he was not certain that the employees heard the results. According to Hollander, he then asked Tackett to repeat the tally to the employees, and he denied grabbing her arm or expressing anger. I do not credit Hollander's version of this incident.

¹⁷Tackett testified that the 10-foot sections were left from a run of hoses which were originally 25 feet in length. She stated that the Respondent had a request for 15-foot hoses and filled this order by cutting the desired length from the longer section of hoses. Tackett stated that the remaining sections could not be defective, and that they should have been prepared for shipment.

After the hoses were destroyed, Hershey informed Tackett that he had no work available and sent her to Hollander. At approximately 10 a.m. Hollander laid Tackett off, citing lack of work as the reason. He instructed her to contact him by telephone the following Tuesday to determine whether there was work available. When Tackett called as instructed, she was told that the Respondent had no work for her. The following day Tackett again attempted to contact the Respondent, but Hollander refused to talk to her and instructed his secretary to inform Tackett that there was no work available. Tackett was recalled on September 25, and worked for approximately a week. She was subsequently laid off again on September 29, because there was no work. The following week when Tackett went to the Respondent's office to pick up her paycheck, Hollander asked her to repay the \$50 he had given her in August. When Tackett said that she thought it was a gift, Hollander indicated that it was once a gift, but that he did not consider it to be such now. He told Tackett that she was "an unappreciative employee."

[10] Employee Virgil Brummitt was also laid off on September 15 at approximately 11 a.m. He was informed that there was no work available and he was instructed to remain in contact with the Respondent. Brummitt remained in layoff status for several weeks and was then recalled. After working for approximately 7 days, Brummitt was laid off again and then recalled.

Employee Morgan was laid off on September 15 at approximately 3:30 p.m. because of lack of work. Morgan was polishing castings at the time of his layoff, and he testified that there was sufficient work to carry him through the following day. Morgan contacted the Respondent's office the following Tuesday and was told that there was still no work avail-

fice the following Tuesday and was told that there was still no work available. He was instructed to remain in contact with the Respondent. Morgan did not contact the Respondent for more than a month, and when he did, he was informed that there was only a single day's work available.¹⁸

The day after the election, the results were the topic of conversation around the Respondent's plant. The uncontroverted testimony indicates that Burgher approached employee Jones and asked her how she had voted in the election. Jones replied that she had voted "the right way." All of the employees testified that a sign was posted by the timeclock stating, "I know who." There was no signature attached to the bottom of the sign. Burgher testified that she put the sign up because someone had jammed the timeclock. According to Burgher, she wanted to indicate that she knew who was responsible. In view of the Respondent's continuous acts of harassment and retaliation against the employees after the election, I find Burgher's explanation entirely unpersuasive. I find, therefore, that the sign was posted to indicate that the Respondent's officials were aware of the identity of the employees who supported the Union.

On September 18, employee Reagan reported to work and was informed that she would not be allowed to work because of an oil leak in her machine. Hollander told Reagan that he would have to order a part for the machine. Reagan testified that in the past when her machine was broken, she was allowed to work on other machines or was given other duties in the plant. On September 20, Reagan was recalled and worked until her discharge the following day.¹⁹

¹⁸Hollander testified that he had attempted to get in touch with Morgan during that month to recall him to work, but was unable to do so.

¹⁹The circumstances surrounding Reagan's discharge will be discussed later herein.

On September 19, when employee Sawmiller reported to work she was informed by Hollander that her machine had broken down, and that she would be laid off until the machine was repaired.²⁰ Sawmiller contacted the Respondent the following day and was informed that her machine was still not repaired. She was not recalled to work until September 26. Sawmiller worked several days thereafter and then was laid off again due to lack of work. On October 6, Sawmiller returned to the plant to pick up her paycheck. Hollander noticed that she was not feeling well and suggested that she see a doctor. Later that day, Sawmiller called Hollander and informed him that she was 3 months pregnant and that she had complications with a kidney infection. Hollander [11] told the employee to call him back when she was better. On October 31, Sawmiller called Hollander and was informed that it was the Respondent's policy not to allow pregnant women to work in the shop, therefore she was discharged.²¹

On September 20, Hollander laid off employees Cash, Cullars, and Graham. In each instance lack of work was cited as the reason. Cash was laid off at noontime and the Respondent never recalled her. Cullars was recalled on September 25, and she was laid off several times thereafter. The record does not indicate when Graham was recalled, but this employee testified that she was recalled and laid off many times after September 20,

²⁰Sawmiller did not work on September 18, but testified that her machine was operating correctly the preceding Friday.

²¹Hollander testified that the Respondent initiated this policy for the safety and benefit of female employees who became pregnant. Sawmiller and Venters credibly testified that at least two other female employees were allowed to work in the plant while they were pregnant. Venters stated that she overheard Burgher tell one of these employees that she could work until her 6th month of pregnancy, and that the employee wore maternity clothes while working in the plant.

and that each time she was laid off, she was informed that there was no work.

On September 20, Hollander came into the plant and accused employee Wilson of having one of the male employees unload a truck for her. Hollander told Wilson that if she wanted anything done she was to come to him or to Burgher. He concluded the conversation by telling Wilson "You better watch your step, and your mouth, too." At the end of the workday, Wilson was told by Hollander not to come to work the next day because there was none available. She was instructed to contact him the following Monday. Wilson testified that there was work available in the plant at the time of her layoff, and that she had been recalled and laid off several times after September 20 and that on each occasion there was work available in the plant.

On September 21, Ward came over to the machine that Reagan was operating and commented that it was "a shame the way the employees had done the Respondent." Reagan then accused Ward of being in favor of the Union, and this accusation so upset Ward that she spoke to Burgher about it. Burgher and Ward went into the Respondent's office and reported the incident to Hollander. Hollander came out of his office and motioned all of the employees over to Reagan's machine. According to Reagan, Hollander would not allow her to speak and accused her of having a big mouth and threatened to throw her out of the plant. He had Ward repeat what Reagan said to her, and he then fired Reagan for talking about the Union while on the job. Venters, who was standing in the group of employees, testified that Hollander then turned to her and stated "that goes for you, too." According to Venters, Hollander then told her to "get [her] ass back to work and that [she] had raised enough hell and started

enough rumors." Venters testified that Hollander stated, "You are making your bed and I will see that you pay for it." He then stated that he had been in "this mess before."

Hollander acknowledged that he fired Reagan because she was creating friction and she discussed the Union on the job. He admitted that he ordered Venters back to work, but denied swearing at her. Ward and another employee (Wilson) testified concerning this incident and gave a version substantially similar to that of Hollander. All witnesses agreed that Hollander fired Reagan because she was discussing the Union while on the job and that he ordered Venters back to work. The only area of conflict concerns the exact statements made by him while doing so. Considering the entire pattern of Hollander's conduct, both prior and subsequent to the election, and considering the prominent role that Ward played in unlawful poll of the employees in August, I am persuaded that Hollander made the statements attributed to him by Venters. Consequently, I credit her version of this incident.

[12] On October 10, employee Jones was laid off because Hollander claimed that a shipment of cable was lost and he had no other work for her. Jones testified that in the past when she did not perform her usual duties, she was assigned work elsewhere in the plant.²²

During the week of October 16, Jones and Venters were working at the assembly tables. Burgher instructed Venters to operate a machine which fed parts to Jones for assembly. Shortly after Venters began running the machine, she discovered that she was catching up with Jones and that they were failing to assemble the required parts. Because of this Ven-

²²Jones was also laid off on December 20 for a 2-day period.

ters returned to the assembly table and began working with Jones on her own initiative. Burgher questioned this and called Hollander out into the plant. When the employees explained the difficulty, Hollander told them that he would allow the employees to work together at the table provided they produced 125 parts a day. In the past these employees jointly produced 75 parts each day. Several days later Hollander came into the plant and asked Jones and Venters if they were producing the 125 parts that he insisted upon. The employees informed him that this was impossible and that they were only able to produce 100 parts. Hollander then demanded 125 parts "or else." On October 21, Venters left the Respondent's employment and never returned, although she had received several calls from Hollander asking her to do so.

Employee Linton testified concerning several conversations with Hershey and Hollander about the Union after the election. He stated that 2 or 3 weeks after the election Hershey told him that the names of the four instigators of the Union were "mud."²³ Linton further testified that in November Hershey asked him if he had said anything about the Union around the plant and he told Linton that his days were "numbered." After charges were filed by the Union, Linton received a letter from the Board agent requesting information to be used in the investigation of the charges. Linton called Hershey at his home and informed him of the letter. Hershey came to Linton's home and took the letter and subsequently invited Linton over to his home. Hershey told Linton that he wanted him to call the Regional Office of the Board and inform them that he was interested in the Union and wanted to find out what was going on. Accord-

²³There was no indication as to who these instigators were considered to be.

Respondent's entire operation, and that she simply trained new employees when they initially reported to the job. With respect to Hershey, the Respondent alleges that this individual is the technical engineer in charge of design, cost, and tooling, and in addition is responsible for quality control. Respondent denies that Hershey possesses any supervisory authority whatsoever. The relevant facts, however, do not support the Respondent's position with respect to these three individuals.

Gearing credibly testified that he was originally hired as a maintenance man and that after a few weeks the Respondent placed him on salary (\$10,000 per year) with the understanding that he would run the plant. Hollander admitted that Gearing was placed on salary, but states that this was done in order to allow Gearing to earn a fixed sum of money without working long hours of overtime each week.²⁵ Hearing testified that he had authority to give work to employees, to see that the production was maintained, and to transfer employees from one job assignment to another. His testimony in this regard was corroborated by employees Wells, Sawmiller, Reagan, Haywood, and Morgan. Each of these employees testified that Gearing had authority to grant them time off for emergency leave or for illness and that he responsibly directed their work. There is evidence in the record that Hollander not only considered Gearing the foreman, but also informed at least one employee that Gearing occupied this position. The unrefuted testimony of Haywood indicates that when he was hired, Hollander told him that he would take instructions

²⁵Hollander claimed that Gearing worked 60 to 80 hours a week. It is significant to note that while Hollander professed to be concerned about the long hours Gearing was working, he complained, while testifying, that Gearing was no longer willing to put in the extra hours after he became salaried.

ing to Linton, Hershey gave no explanation as to why he wanted Linton to do this. While Linton was at Hershey's home, Hollander came there and told the employee that he could not order him to make the call to the Regional Office, but that he would like for him to do it.²⁴

Sometime in December employee Haywood was laid off for an alleged lack of work. On December 29, Haywood returned to the Respondent's office to pick up his paycheck. While there Hollander asked Haywood how he had voted in the election. Haywood replied that he had voted for the Union. Hollander then stated that he knew this but wanted to see what the employee would say.

During the period following the election and continuing through the first of the following year, the Respondent hired four new employees. Although the record is not absolutely clear on this point, it appears that two of the employees were hired sometime between October and December, and that they performed jobs that the employees in layoff status would have normally performed. The remaining two employees were hired sometime during the first part of 1968.

[13] Concluding Findings

The initial issue to be resolved in this case is the status of Gearing, Burgher, and Hershey. The Respondent takes the position that Gearing was never designated foreman and that he in fact usurped the title and authority of this position. The Respondent further claims that Burgher was the oldest and most experienced employee, completely familiar with

²⁴There is no indication in the record that Linton ever made such a call to the Regional Office.

from Scarpelli, the toolmaker, because the foreman (Gearing) was in the hospital. On the basis of the above, it is clear that Gearing had authority to responsibly direct the work of the employees, to change their job assignments, to grant them time off, and to require them to work overtime if needed. It is also clear that the employees regarded Gearing as their supervisor.²⁶ *Hubertz Coal Co., Inc.*, 168 N.L.R.B. No. 22. On the basis of the above, I find and conclude that Gearing was the Respondent's foreman, and that he was a supervisor within the meaning of Section 2(11) of the Act. *Stratford Lithographers, Inc.*, 168 N.L.R.B. No. 65; *Newland Knitting Mills*, 165 N.L.R.B. No. 104.

Respondent's contention that Burgher was nothing more than a senior employee who acted in the capacity of the leadgirl, also lacks persuasive force. The evidence discloses that from October 1966 until May 1967, a portion of the Respondent's operation was housed in a temporary plant located a considerable distance from the main plant. This division in the operation was caused by a fire which destroyed a portion of the main plant. It is undisputed that [14] Burgher was the only person in charge of the six or seven female employees who worked in the temporary building, and that Hollander only visited the temporary building for short periods of time during the workweek. The employees who worked under Burgher in the temporary building credibly testified that she had the authority to, and in fact did, grant them time off for emergency situations. Further, that she assigned them duties and saw to it that they were carried

²⁶The Respondent's claim that Gearing usurped the authority that he exercised in the plant is completely unpersuasive. From my observation of Hollander, I am of the firm belief that this employer would not have allowed anyone to assert any supervisory authority in the plant unless he specifically authorized it.

out. The evidence also indicates that when Gearing was fired Burgher assumed his duties and directed all of the employees in the plant with the exception of the employees in the plastics department. Several employees testified that they were told by Hollander at the time they were hired that they would take their instructions from Burgher. Moreover, it is abundantly clear that Burgher regularly transmitted information concerning employees' conduct to Hollander, and that on the basis of information supplied by Burgher that Hollander took action affecting the employees. Considering all of the above, I find and concluded that Burgher was a supervisor within the meaning of Section 2(11) of the Act. *Huberta Coal Co., Inc., supra; Newland Knitting Mills, supra.*

The evidence is equally as compelling concerning the supervisory status of Hershey. Hershey hired employee Linton and informed him at the time of hire what his rate of pay would be. Employees Linton, Tackett, Virgil and William Brummitt credibly testified that Hershey gave them their job assignments, transferred them from one job to another, and granted them time off when they requested it. Accordingly, I find and conclude that Hershey was also a supervisor within the meaning of Section 2(11) of the Act.

Having determined that Gearing, Burgher, and Hershey were supervisors, it necessarily follows that the Respondent is responsible for the conduct and statements of these individuals. *Webb Tractor and Equipment Company*, 167 N.L.R.B. No. 46. This record is replete with instances of unlawful conduct engaged in by the three supervisors and by the Respondent's president, commencing shortly after the handbilling of the plant in July. Hollander's threat to close up the plant and go fishing if the Union became the bargaining representative was repeated by

Gearing and Hershey to employees Haywood and Linton. This statement carried the clear threat that the employees would face a loss of employment due to plant closure if they selected the Union as their representative. There are numerous instances of unlawful interrogation of employees by the supervisors concerning union activities in the plant. Gearing admitted questioning Sawmiller to determine who was responsible for causing the Union to organize the employees. Hershey made a similar attempt to get information concerning the Union from employee Linton. Burgher was particularly active in this regard, and repeatedly questioned employees in an effort to determine the identity of the union adherents and the extent of the union activity among the employees. That such conduct by supervisors interferes with, restrains, and coerces employees in the exercise of their statutory rights is too fundamental to warrant citation. I find, therefore, that the Respondent violated Section 8(a)(1) of the Act by the above conduct of its supervisors.

In addition to the above unlawful conduct, Burgher polled the employees in order to determine their views about union representation. This poll was conducted at a time when representation proceedings were pending before the Board, and it is clear that the poll was not for the purpose of determining whether or not the Respondent should recognize the Union as the majority representative of the employees. *Blue Flash Express, Inc.*, 109 N.L.R.B. 591, 593. Accordingly, I find and conclude that the Respondent committed a further violation of Section 8(a)(1) of the Act when Supervisor Burgher conducted an unlawful poll to determine the extent of employee support for the Union. *Han-Dee Spring & Mfg. Co., Inc.*, 132 N.L.R.B. 1542.

[15] The Respondent also violated Section 8(a)(1) when Gearing and Hollander on separate occasions attempted to enlist the aid of employee Haywood to check with other employees and to find out whatever he could about the Union. It is plain that both Gearing and Hollander were seeking to use this employee as an informer to ascertain the extent of the union activity among the employees. This effort on the part of the Respondent's president and foreman further violates Section 8(a)(1) of the Act. *Atlas Engine Works, Inc.*, 163 N.L.R.B. No. 61.

The Respondent's attempts to interfere with and thwart the union activity of its employees did not cease after the election established that a clear majority of the employees desired union representation. Indeed, the evidence discloses that after the election, the Respondent's unlawful activities intensified. The day following the election Tackett, the union observer during the election, was laid off at 10 a.m., and Virgil Brummitt was laid off an hour later. Morgan was laid off at 3:30 p.m. that same day. On September 18, Reagan was not allowed to work at all because of an alleged defect in her machine, and on September 19, Sawmiller was also informed that she could not work because her machine needed repairing. On September 20, Cash, Cullars, and Graham were laid off.

Although the Respondent asserts an economic defense, the evidence overwhelmingly supports the General Counsel's claim that the layoffs were unlawfully motivated. After expressing strong displeasure over the results of the election in the presence of all the employees, Hollander began laying off employees the very next day. There was no prior indication that a work curtailment was contemplated. It is significant to note that Tackett was the first employee selected for layoff that morning. Of equal significance is the fact that the Respondent departed from the past prac-

tice of finding other jobs around the plant for the employees during slow periods, e.g., cleaning machinery, washing windows, and general maintenance work. Thus, it is apparent that Hollander was carrying out the threat voiced to Gearing when he stated, "that if the Union got in, he would keep the 'dedicated' employees and get rid of the rest." While the record shows that only two employees were actually fired, it is clear from the Respondent's treatment of the employees after the election that Hollander was seeking to achieve his purpose by penalizing the employees for voting for the Union, thereby discouraging their membership in the Union.

Additional evidence of this unlawful motivation is contained in Hollander's statements to employees during the week following the election. He told employee Wilson "to watch her step and her mouth," and he stated to employee Venters that "you're making your bed and I'll see that you pay for it." He also told Venters that he had been in "this mess before."²⁷ Hollander continued his harassment of the employees by suddenly increasing the production quota of the employees working at the assembly table. He demanded that these employees, Jones and Venters, produce 125 parts a day, whereas he previously had been satisfied with little more than half that amount. This dramatic increase in the production requirements, after the election, is a further demonstration of Hollander's efforts to retaliate against the employees for selecting the Union as their bargaining representative.

²⁷ As the General Counsel correctly pointed out in his brief, "this mess before" obviously referred to the Union's prior attempt to organize the employees in 1964. A complaint was issued in connection with that effort and was subsequently dismissed by the Trial Examiner (TXD 378 (5)).

[16] It is in the totality of these circumstances that I find and conclude that the Respondent's claim of economic justification for the layoffs must be completely rejected. I further find that the motivating cause underlying the Respondent's conduct was the intense desire to retaliate against the employees for voting in favor of union representation and thereby discourage employee membership in the Union. *Battle Creek Steel Fabricating Company, Inc.*, 169 N.L.R.B. No. 125; *West Side Plymouth, Inc.*, 170 N.L.R.B. No. 98. The suddenness of the layoffs, the departure from the past practice of putting employees to work in other jobs when business was slack, the various statements made to employees after the election, and the imposition of oppressive production quotas are all factors which far outweigh the Respondent's claim of economic necessity in its treatment of the employees. Accordingly, I find that the Respondent violated Section 8(a)(3) and (1) of the Act by laying off employees and increasing the production quota of two employees for discriminatory reasons.

The discharges of Reagan and Sawmiller must also be considered as a part of the pattern of unlawful conduct directed at the employees by the Respondent. It is clear that Reagan was fired for discussing the Union on the job; but it is equally as clear that until this particular incident the Respondent never invoked or enforced a rule against discussions of the Union in the plant. Indeed, the evidence shows that the Respondent's president and supervisors repeatedly discussed the Union with employees while they were on the job, and that Bargher freely circulated among the employees while they were working in an effort to poll them about their union sympathies. The conversation between Ward and Reagan which precipitated the latter's discharge was in fact initiated by Ward, who was complaining

about the fact that the majority of the employees voted in favor of the Union. Hollander summarily discharged Reagan without affording her an opportunity to explain or defend her conduct, and there is no evidence in this record that any other employee was ever discharged for discussing the Union while working. It is apparent, therefore, that the rule against discussing the Union while on the job, if it existed at all, was spontaneously invoked and discriminatorily enforced against Reagan. Consequently, her discharge was in violation of Section 8(a)(3) and (1) of the Act. *Talon, Inc.*, 170 N.L.R.B. No. 42; *Clanbach, Inc. d/b/a Carousel*, 170 NLRB No. 35. Cf. *Rexall Chemical Company, A Division of Rexall Drug and Chemical Company*, 172 N.L.R.B. No. 147.

The Respondent's claim that Sawmiller was discharged because of a policy against allowing female employees, for purposes of safety, to work in the plant is likewise without merit. The credible evidence indicates that at least one other female employee was allowed to work until she was in her 6th month of pregnancy. Moreover, Hollander's comments to Sawmiller at the time that she was ill, due to her pregnancy, gave rise to the expectation that the employee would be allowed to return to work once her condition was better. There was no mention of the alleged company policy against allowing pregnant women to work in the plant. I find therefore that Hollander seized upon the fact of Sawmiller's pregnancy as a pretext to enable him to get rid of one more employee identified as a union supporter. I therefore find that by the discharge of Sawmiller, the Respondent further violated Section 8(a)(3) and (1) of the Act. *Jackson Packing Company*, 170 N.L.R.B. No. 155.

Conclusions of Law

1. The Respondent, Tiidee Products, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[17] 2. International Union of Electrical, Radio and Machine Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The above Union is the duly certified collective-bargaining representative of the Respondent's employees in the following appropriate unit:

All production and maintenance employees at the Employer's Dayton, Ohio, plant, excluding all office clerical employees, guards and supervisors, as defined in the Act.

4. By unlawfully interrogating employees to determine the identity of union adherents and the extent of union activity in the plant, the Respondent interfered with, coerced, and restrained employees in the exercise of their statutory rights and violated Section 8(a)(1) of the Act.

5. By threatening to close the plant in the event that the Union became the employees' bargaining representative, and by threatening to get rid of employees who supported the Union, the Respondent interfered with, restrained, and coerced the employees and violated Section 8(a)(1) of the Act.

6. By seeking to induce employees to act as informers concerning the union activities of fellow employees, the Respondent further violated Section 8(a)(1) of the Act.

7. By conducting a poll of the employees in order to determine their sentiment for or against the Union, at a time when a representation proceeding was pending before the Board, the Respondent further violated Section 8(a)(1) of the Act.

8. By unlawfully laying off employees because a majority of the employees selected the Union as their collective-bargaining representative, the Respondent violated Section 8(a)(3) and (1) of the Act.

9. By discriminatorily discharging employees in order to retaliate against employees for selecting the Union as their collective-bargaining representative and in order to discourage membership in the Union, the Respondent violated Section 8(a)(3) and (1) of the Act.

10. By arbitrarily increasing production quotas of employees in order to retaliate against them for selecting the Union as their collective-bargaining representative, the Respondent changed terms and conditions of employment of its employees in order to discourage membership in the Union and violated Section 8(a)(3) and (1) of the Act.

11. By refusing to bargain with the Union as the certified collective-bargaining representative of the employees in an appropriate unit, the Respondent violated Section 8(a)(5) and (1) of the Act.

12. By refusing to furnish the Union with information pertaining to employees' existing wage and fringe benefits, the Respondent also violated Section 8(a)(5) and (1) of the Act.

13. By refusing to meet and negotiate with the Union, as the duly certified representative of its employees, until all litigation was concluded, the Respondent further violated Section 8(a)(5) and (1) of the Act.

14. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[18] The Remedy

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. As I have found that the Respondent discriminatorily laid off and discharged employees on various dates beginning September 15, 1967, I shall recommend that the Respondent recall all employees discriminatorily laid off and reinstate all employees discriminatorily discharged to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered as a result of the discrimination against them. The sum payable to these employees shall equal the amount they would have earned from the date of their unlawful layoff or discharge, as the case may be, to the date of recall or the offer of reinstatement, less any net earnings during the said period. Backpay shall be computed on a quarterly basis in a manner consistent with the Board policy set forth in *F. W. Woolworth Company*, 90 N.L.R.B. 289, and interest thereon shall be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 N.L.R.B. 716. In the case of employee Sawmiller, however, backpay shall not accrue from the 6th month of her pregnancy to the time that she would have normally been able to return to work after the termination of her pregnancy.

Because the Respondent has refused and continues to refuse to bargain with the Union as the duly certified collective-bargaining representative of its employees in the unit found appropriate, I shall further recommend that it cease and desist from refusing to bargain and, upon request,

bargain in good faith with the Union. Further, that if an understanding is reached, embody such understanding in a signed agreement. In view of the nature of the Respondent's extensive unfair labor practices and because this conduct evinces a complete rejection of the collective-bargaining principle, I shall also recommend that the certification period be extended to begin on the day that the Respondent commences to bargain in good faith with the Union, upon request, as the certified bargaining representative. *Mar-Jac Poultry Company, Inc.*, 136 N.L.R.B. 785; *Commerce Company d b c Lerner Hotel*, 140 N.L.R.B. 226, 229, enfd. 328 F.2d 600 (C.A. 5); *Excelsior Laundry*, 167 N.L.R.B. No. 64; *Monroe Manufacturing Company*, 167 N.L.R.B. No. 157.

In addition to the above, the Union seeks a far broader remedy. The Union requests that the Respondent make the employees whole for wages and benefits which they might have received but for the Respondent's unlawful refusal to bargain, and that the Respondent be required to pay the Union the amount of dues and initiation fees it lost dating from 130 days after the Union was certified. The 130 days is predicated upon the testimony of high-ranking union officials that in their experience a contract containing a union-shop clause is generally executed within 100 days after certification. The Union's request for this type of an expanded remedy represents the views of a growing body of respectable authority who take the position that the Board's current policy and practices in remedying this type of unlawful refusal to bargain is neither adequate nor realistic. There is currently pending before the Board at the present time two cases in which such a request is being considered.²⁸ In each of these cases the

²⁸*Zinke's Foods*, Case 30-CA-372 (TXD-662-66, Trial Examiner Josephine Klein) *Ex-Cell-O Corp.*, Case 25-CA-2377 (TXD-80-67, Trial Examiner Osley Vose).

Board has received oral argument on the question of an adequate remedy, but has not, as yet, rendered its decision. As the remedy requested in the instant cases involves both legal and policy questions which should be initially considered by the Board, I am not inclined to grant the remedy requested by the Union. In the course of the trial of these cases, I allowed the Union to develop fully in the record all evidence necessary [19] to sustain its position on this issue and in the event that the Board does modify its policy in this regard, the Union's position is amply protected. Accordingly, I decline to require the Respondent to make the employees whole for wages and benefits that might have been negotiated but for the unfair labor practices, and I likewise decline to require the Respondent to pay the Union the amount of dues and initiation fees lost as a result of a failure to negotiate a collective-bargaining agreement. *Monroe Auto Equipment Company, Hartwell Division*, 164 N.L.R.B. No. 144. Cf. *Excelsior Laundry, supra*.

Because of the nature and extent of the unfair labor practices found herein and because these violations manifest an attitude of hostility directed toward the very basic purposes of the Act, and further, in order to prevent the commission of other unfair labor practices by the Respondent, I shall recommend a broad cease-and-desist order. *Barnwell Garment Company, Inc.*, 163 N.L.R.B. No. 8; *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (C.A. 4).

Accordingly, upon the foregoing findings of fact and the conclusions of law and upon the entire record in this case, I recommend, pursuant to Section 10(c) of the Act, the following:

RECOMMENDED ORDER

Respondent, Tilde Products, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees to determine the identity of union supporters and the extent of union activity in the plant.

(b) Threatening to close the plant or to discharge employees who support the Union in the event that the Union became the collective-bargaining representative.

(c) Seeking to induce employees to act as informers in an effort to determine the extent of union activities of other employees in the plant.

(d) Unlawfully polling employees to determine whether or not they support the Union.

(e) Discriminatorily laying off employees because the majority of the employees selected the Union as their collective-bargaining representative.

(f) Discriminatorily discharging employees because the majority of the employees selected the Union as their bargaining representative and because the employees so laid off were supporters of the Union.

(g) Discriminatorily changing terms and conditions of employment in order to retaliate against employees for voting in favor of union representation, and to discourage membership in the Union.

(h) Refusing to bargain collectively with International Union of Electrical, Radio and Machine Workers, AFL-CIO, as the duly certified exclusive bargaining representative of its employees concerning wages, rates of

pay, hours, and other terms and conditions of employment in the following appropriate unit:

All production and maintenance employees at the Respondent's Dayton, Ohio. plant, excluding all office clerical employees, professional employees, technical employees, guards and supervisors as defined in the Act.

[20] (i) Refusing to furnish the Union with requested information necessary to enable the Union to act fully in its capacity as the collective-bargaining representative of the employees in the above unit.

(j) Refusing to meet and negotiate with the Union, as the duly certified representative of the employees, until all pending litigation is finally disposed of.

(k) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Union of Electrical, Radio and Machine Workers, AFL-CIO, as the duly certified collective-bargaining representative of its employees in the appropriate unit with respect to rates of pay, wages, hours of work, and other terms and conditions of employment, and embody in a signed agreement any understanding reached.

(b) Furnish the Union with the requested information pertaining to wage and fringe benefits currently received by the employees in the bargaining unit.

(c) Recall any employee currently in layoff status, found herein to have been discriminatorily laid off, to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed by them, and make them whole for any loss of pay suffered by reason of their discriminatory layoffs in the manner set forth in the section of this Decision entitled "The Remedy."

(d) Offer Wanda Reagan and Virginia Sawmiller immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earning they may have suffered by reason of the discrimination against them, in the manner set forth in the section of this Decision entitled "The Remedy."

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Recommended Order.

(f) Notify the employees laid off, if any are presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

[21] (g) Post at its Dayton, Ohio, plant copies of the attached notice marked "Appendix."²⁹ Copies of said notice, on forms provided by the Re-

²⁹In the event that this Recommended Order is adopted by the Board, the word, "a Decision and Order" shall be substituted for the words "the Recommended Order

gional Director for Region 9, after being duly signed by the Respondent's official representative, shall be posted immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 9, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.³⁰

Dated at Washington, D. C.

of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

³⁰In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 9, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

Notice to All Employees

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

THIS NOTICE IS POSTED PURSUANT TO A RECOMMENDED ORDER OF THE TRIAL EXAMINER, ISSUED AFTER A TRIAL IN WHICH BOTH SIDES HAD THE OPPORTUNITY TO PRESENT EVIDENCE. THE TRIAL EXAMINER FOUND THAT WE VIOLATED THE NATIONAL LABOR RELATIONS ACT AND HAS ORDERED US TO INFORM OUR EMPLOYEES OF THEIR RIGHTS.

The Act gives all employees these rights:

- To organize the union
- To form, join, or help unions
- To bargain as a group through a representative of their own choosing
- To act together for collective bargaining or other mutual aid or protection
- To refuse to do any and all of these things

We assure all of our employees that:

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT threaten our employees with plant closure, or discharge, or with any other type of reprisals because they have selected International Union of Electrical, Radio and Machine Workers, AFL-CIO, as their exclusive bargaining representative.

WE WILL NOT attempt to get employees to inform on the union activities and desires of their fellow employees.

WE WILL NOT intentionally interrogate employees concerning their union membership, activities, or desires, nor will we unlawfully poll our employees in order to discover their sentiments about the Union.

WE WILL NOT lay off employees because they selected the Union as their collective-bargaining representative.

WE WILL NOT discharge employees because they selected the Union as their collective-bargaining representative.

WE WILL NOT discriminatorily change terms and conditions of employment because employees voted in favor of union representation, or in order to discourage membership in the Union.

WE WILL NOT refuse to bargain collectively with the above Union as the certified collective-bargaining representative of the employees in the following unit:

All production and maintenance employees at our Dayton, Ohio, plant, excluding all office clerical employees, professional employees, technical employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to furnish the Union with information that will enable it to function as the bargaining representative of our employees in the above unit.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights under the Act.

WE WILL make whole VIRGINIA SACHILLER and WANDA REAGAN for any loss of earnings they may have suffered by reason of their discriminatory discharges.

WE WILL recall and make whole all employees who were discriminatorily laid off by us.

WE WILL notify any of our employees if currently in layoff status and if presently serving in the Armed Forces of the United States of their rights to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

WE WILL bargain collectively with the above Union as the duly certified collective-bargaining representative of our employees in the above unit and if an understanding is reached, we will sign a contract with the Union.

THREE PROPOSALS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Federal Office Building, Room 2407, 550 Main Street, Cincinnati, Ohio 45202, Telephone 604-3666.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

THREE PROTECTS, INC.

and

INTERNATIONAL UNION OF ELECTRICAL,
RADIO & MACHINE WORKERS, AFL-CIO-CIO-1/

Cases 9-CA-4440

9-CA-4488

9-CA-4536

9-CA-4563

FOR RELEASE AFTERNOON PAPERS

FEB 28 1968

DECISION AND ORDER

On August 28, 1966, Trial Examiner Gordon J. Nyatt issued his Decision in the above-entitled cases, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Union and the Respondent filed exceptions to the Trial Examiner's Decision and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in these cases, and hereby

1/ The Union has requested that the initials "CIO" be included in the designation of its affiliation. In the absence of objections, we grant its request.

adopts the findings, conclusions, and recommendations of the Trial Examiner,^{2/}
as modified herein.^{3/}

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, as modified herein, and orders that the Respondent Tilde Products, Inc., Dayton, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified.

Dated, Washington, D.C.

Frank W. McCulloch, Chairman

Gerald A. Brown, Member

Howard Jenkins, Jr., Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

2/ The Respondent filed a motion to reopen and consolidate these cases with Cases 9-CA-4618, 9-CA-4639-2, and 9-CA-4710. We have considered the Respondent's motion and, finding no merit therein, hereby deny it. As for the Respondent's contention of bias and prejudice on the part of the Trial Examiner, we have reviewed the record and find the contention without merit.

We find it unnecessary to pass upon the Charging Party's request that we make certain additional 8(a)(1) findings. Such findings, if made, would be cumulative in nature and would not affect the scope of our Order and Remedy herein because we have already provided a broad cease and desist order protecting all of the employees' Section 7 rights.

3/ The capitalized second paragraph of the "Appendix" attached to the Trial Examiner's Decision and Recommended Order is hereby amended to read as follows: THIS NOTICE IS POSTED PURSUANT TO AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD ISSUED AFTER A TRIAL IN WHICH BOTH SIDES HAD AN OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENTS. THE BOARD FOUND THAT WE VIOLATED THE NATIONAL LABOR RELATIONS ACT AND HAS ORDERED US TO INFORM OUR EMPLOYEES OF THEIR RIGHTS.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,209

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND
MACHINE WORKERS, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 23,321

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

THIDEE PRODUCTS, INC.,

Respondent.

On Petition to Review and Application to
Enforce an Order of The National
Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR 11 1970

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United States Court of Appeals
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No. 23,209

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND
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Respondent.

On Petition to Review and Application to
Enforce an Order of The National
Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

STATEMENT OF ISSUES PRESENTED

1. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(1) of the Act by promulgating and maintaining rules which threatened employees with discipline and discharge if they engaged in solicitation or distribution of literature of any kind on Company property; by interrogating an employee as to what he had discussed with

counsel for the General Counsel and counsel for the Union at a prior unfair labor practice hearing; and, by warning an employee against associating with other employees who supported the Union.

2. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging employees David Leffler and Pauline Messer.

3. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(3), (4) and (1) of the Act by discriminatorily discharging or forcing the termination of employees John Haywood, Claudine Tackett and Phyllis Wilson.

4. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(3), (4) and (1) of the Act by issuing warning notices to employees Bill Wells and Claudine Tackett, thereby changing their working conditions in retaliation for their Union adherence and adverse testimony at a prior Board unfair labor practice hearing.

5. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(5) and (1) of the Act by adopting and posting a new set of work rules, and by instituting a probationary period of employment for new employees, without consulting or bargaining with the Union certified as the exclusive representative of its employees.

6. Whether the Board's Order is valid and proper.

STATEMENT OF THE CASE

I. REFERENCES TO RULING

This case is before the Court upon the petition of the International Union of Electrical, Radio & Machine Workers, AFL-CIO (hereinafter

referred to as "the Union"), to review, and application of the National Labor Relations Board to enforce, a Board order issued against Tiidee Products, Inc., (hereinafter referred to as "the Company") on June 24, 1969, pursuant to Section 10(c) of the National Labor Relations Act as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*). The Board's decision and order¹ are reported at 176 NLRB No. 133, and this Court has jurisdiction over the proceedings under Section 10(e) and (f) of the Act. The case has not previously been before the Court, although another case involving enforcement and review of a Board order against the Company is currently awaiting decision by this Court. (See *infra*, p. 4, n. 2)

II. THE BOARD'S FINDINGS OF FACT

The Board found that the Company violated Section 8(a)(1) of the Act by coercively interrogating an employee, by cautioning an employee against associating with Union adherents, and by adopting and posting unlawfully broad "no-solicitation" and "no-distribution" rules for the purpose of interfering with the Union activities of its employees. The Board further found that the Company violated Section 8(a)(3), and (1) of the Act by discriminatorily discharging employees David Leffler and Pauline Messer; and that it violated Section 8(3), (4) and (1) of the Act by discriminatorily discharging or forcing the termination of employees John Haywood, Claudine Tackett, and Phyllis Wilson and by changing the working conditions of employees Bill Wells and Claudine Tackett. Finally, the Board found that the Company violated Section 8(a)(5) and (1) of the Act by adopting and posting a new set of work rules, and by instituting a probationary period for new employees without consulting or bargaining with the Union. The evidence upon which the Board based its findings is summarized below.

¹ "D&O" and "TXD" references are to the Board's Decision and Order and the Trial Examiner's opinion. "Tr." and "Exh" references are to the Record Transcript and accompanying exhibits. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

**A. Background: The Company's prior
unfair labor practices**

The Company is an Ohio corporation, engaged in the manufacture of metal products at its plant in Dayton (TXD 2). In September 1967, the Union won a representation election by a vote of 19 to 6, and shortly thereafter was certified by the Board's Regional Director as the exclusive bargaining agent of the Company's production and maintenance employees. The Company, however, refused to recognize the certification as valid and declined to bargain with the Union. In a subsequent unfair labor practice hearing, the Company's challenge to the Union's certification was consolidated with other unfair labor practice charges stemming from the events of the pre-election period and from the Company's reaction to the Union's election victory. On February 24, 1969, the Board issued its decision and order, affirming the Trial Examiner's decision, and finding that the Company had violated Section 8(a)(1), (3) and (5) of the Act by interrogating, threatening, and otherwise coercing its employees in the exercise of their Section 7 rights; by discriminatorily discharging and laying off employees in retaliation for their selection of the Union as their majority representative; and by refusing to bargain with the Union which had been validly certified as the employees' exclusive bargaining agent. The events of the present case — described below — began shortly after the hearing was held in the earlier unfair labor practice case (hereafter referred to simply as "*Tiidee I*") and are, in fact, a sequel to the earlier proceeding, thereby reflecting a continuing pattern of Company hostility to the Union and to its supporters.²

² The Board's Order in *Tiidee I* is presently under consideration by this Court *sub nom. IUE v. N.L.R.B.* No. 22,797, and *N.L.R.B. v. Tiidee Products*, No. 22,911. The case was argued on October 27, 1969. The Decision and Order of the Board in *Tiidee I* (174 NLRB No. 103) has been printed in the Appendix for the Court's convenience.

**B. New work rules, warnings
and interrogation**

Toward the end of January 1968,³ the Company posted a comprehensive set of 34 "Rules and Regulations" which provided, *inter alia*, as follows:

MINOR OFFENSES:

* * * * *

5. Soliciting or collecting contributions for any purpose whatsoever, on company premises, without the approval of management.

* * * * *

9. Distribution of literature, written or printed matter of any description on company property, not incidental to company business.

As minor offenses, a single violation of these rules would result in the employee being warned. Two violations equalled a "major" offense carrying a penalty of a three day layoff; and two major offenses, in turn, equalled an "intolerable" offense which would subject an employee to discharge (TXD 3; Tr. 20, G.C. Exh. 2).

On January 16, the first day of the hearing in *Tiidee I*, employee Bill Wells testified adversely to the Company on a number of matters, including a conversation in which he was interrogated by supervisor Mary Burgher. When Wells returned to the plant, Irving Hollander, the Company's president, told Wells that he could not come back to work "till this is over." Hollander explained that he and Burgher were attending the hearing, that there was no one left at the plant to tell the employees what to do, and that Wells would be notified when he was needed again. That same day,

³ All subsequent dates refer to 1968 unless otherwise indicated.

Wells was recalled as a witness to testify as to this exchange with Hollander. Subsequently, Wells returned to work, and about four weeks after the end of the hearing, he was called into Hollander's office. (TXD 4; Tr. 229-230) There, in the presence of "three witnesses" — Burgher and two employees — Hollander asked Wells whether he had "swor[n] to tell the truth." When Wells replied that he had, Hollander demanded to know why Wells had made two inconsistent statements at the hearing, and why he had returned as a witness. Wells answered that "it was a public hearing, and [he] thought anybody could come in that wanted to." Hollander then asked Wells whom he had spoken to first at the hearing and what had been said by the attorneys for the General Counsel and for the Union. Wells responded that neither attorney had said anything. Hollander, however, was dissatisfied with this reply and told Wells "I don't think you're coming clean with me." When Wells questioned Hollander as to "what part" he thought Wells was "leaving out," Hollander answered that he simply did not think that Wells was "telling [him] the straight facts about it." Hollander ended the conversation by advising Wells: "I'm not going to come to you any more. The next time you'll come to me" (TXD 4; Tr. 234-235).

On April 10, Wells was instructed by Hollander to watch a new employee named Connie who was working on the machine next to him. Wells was busy running his own machine, but he nevertheless watched Connie and occasionally spot-checked her work. Although the work that Wells checked was satisfactory, it was later discovered that Connie had produced a large number of bad parts. Hollander blamed Wells, and in spite of Wells' protests that he had his own work and could not devote his full attention to the employee next to him, Hollander admonished Wells that he "just [didn't] give a damn how things [were] run . . . [;]" that he "just [didn't] care[;]" and that "[f]or all the damn good . . . [he was, he] might just as well get the hell on out." A short time later, Wells received a warning

notice stating that he had violated "minor" rule number 11: "Failure to perform work as directed." The notice also accused Wells of "carelessness" and "defective work" (TXD 4-5; Tr. 235, 242-243).

C. The discharges

1. John Haywood

Employee John Haywood, an ex-convict on parole, was hired by the Company on March 15, 1967. Three months later, Hollander called Haywood's parole officer, John Weiher, and praised Haywood's work. At that time Hollander also advised Weiher that if the parole board "had any more good men like Mr. Haywood . . . he would offer them employment." On about November 20, 1967, however, Weiher received another call from Hollander complaining that Haywood "had become too much involved in [union] activities." Weiher then visited Haywood, and Haywood confirmed that he had, in fact, joined the Union and that if the Union struck he would support it on the picket line. (TXD 6-7; Tr. 127-132).

In December 1967, Haywood was laid off for several weeks.⁴ On March 7, after the hearing in *Tiidee I* and Haywood's return to work, parole officer Weiher received another phone call from Hollander claiming

⁴ The Board found in its decision in *Tiidee I* that this layoff was motivated by a desire to retaliate against Haywood because of his support for the Union and that it was, consequently, a violation of Section 8(a)(3) and (1) of the Act. At the hearing in *Tiidee I*, Haywood testified that during the Union's election campaign his supervisor, Donald Gearing, had warned him that Hollander would close the plant down if the Union won the election, and that Gearing then asked him "to go around and check with some of the girls and [bring back] any information [he] could get" Haywood refused, however, to engage in any surveillance. Shortly thereafter, Hollander made a similar request to Haywood to find out what he could about the Union, and at the same time warned Haywood that he had "been in enough trouble," and that he (Hollander) didn't "want to see him get in any more." Haywood made no reply, but later reported that there were six employees who supported the Company. Although Haywood declined to sign supervisor Burgher's poll and state whether he was for or against the Union, Hollander later told Haywood that he knew that Haywood had voted for the Union. (TXD 7; 174 NLRB No. 103).

that Haywood was "abusive" and that he had been "using foul language." Hollander told Weiher that he would not permit such behavior because there were many women working at the plant. That night, Weiher went to Haywood's home and advised him that Hollander wanted him to quit because his work had not been "too good" and because he had lied on the witness stand about Hollander. Although Weiher encouraged him to quit, Haywood was reluctant to do so because he lacked one week's work to qualify for a week's vacation with pay. Weiher told Haywood that he would discuss this matter with Hollander the following day. (TXD 7; Tr. 133-134; 142-143).

On March 8, Weiher called Hollander at the plant. After being informed of the problem concerning Haywood's vacation time, Hollander offered to give Haywood his vacation pay if he would leave immediately. Haywood was called to the phone and informed of this proposal, and was also advised by Weiher that it would be "best" if he left because otherwise Hollander might write to the parole board and "cause [him] a lot of trouble later." Haywood agreed to leave and shortly thereafter was given his vacation check by Hollander. At that time, Hollander advised Haywood that wherever he went he "should learn to keep [his] mouth shut." Haywood thanked Hollander for "everything" and left. (TXD 7; 134-135, 143-144, 152).

2. David Leffler

Employee David Leffler was hired by the Company in mid-March and was assigned to run a sander and a finishing mill (TXD 8; 105-106). On Friday, April 12, Hollander took Leffler aside and asked him whether he was becoming close with employees Pauline Messer and Phyllis Wilson. When Leffler told Hollander that he had a date with Messer that evening, Hollander responded that Leffler "should be careful" to whom he spoke

or associated with because "he could get into big trouble." Hollander then complimented Leffler on his work and said that he expected Leffler "to be there a long time" (TXD 5; Tr. 113, 107-108).

Although Leffler was not scheduled to work the next day (a Saturday), he was called that morning by Hollander and requested to come to the plant to "discuss" something. When Leffler arrived, Hollander questioned him as to what time he and employee Messer had returned from their date. After learning that Leffler and Messer had returned at 3:00 a.m., Hollander reminded Leffler that he had been warned that he "could get into trouble by associating [with] and talking to the wrong people." Hollander then asked Leffler how he had interpreted this warning, and Leffler replied that he thought Hollander was referring to the "union sympathizers" who were in the shop. Hollander denied this and claimed that he was simply trying to warn Leffler about some of the women at the shop who "were making forward passes at the men . . . and trying to blackmail them". (TXD 5, 8; Tr. 110-111).

Having thus explained his earlier warning, Hollander informed Leffler that he would "have to let [him] go." Leffler was advised that his work was "inefficient," and that the previous evening he had failed to remove the castings from his machine before quitting and that the castings had been scratched as a result. Although Leffler denied responsibility for the scratches, Hollander insisted that Leffler "wasn't making the company any money" and that he would have to be terminated. (TXD 8; Tr. 111-113).

3. Pauline Messer

Pauline Messer was hired by Hollander on March 27 as a 90-day probationary employee to work on the moulding machine. Hollander warned her at that time that there were "quite a few troublemakers" at the plant, and

that she "should learn who [she] should talk to and who [she] should not talk to." (TXD 9; Tr. 156). During Messer's first week of work, Hollander told her that Hazel Ward (the senior employee who had been assigned to train Messer) had reported that Messer "was one of the quickest girls to learn" and that she "was a good worker." (TXD 9; Tr. 154-155, 157, 169).

On April 1, Messer was in the Company's lunchroom when Supervisor Mary Burgher asked her if they could sit and eat lunch together. Messer declined the invitation, and advised Burgher that she was having lunch with employee Phyllis Wilson (TXD 9; Tr. 158). Wilson was regarded by the Company as a pro-Union employee (See, p. 15 *infra*)

Later that day, employee Ward, in the presence of Supervisor Burgher, informed Messer that "Mr. Hollander likes your work and likes you." but "you should be careful who you're seen talking to and who you're seen associating with" (TXD 9; Tr. 158-159).

Two weeks later, on April 15, Messer signed an authorization card for the Union at the request of employee Claudine Tackett. On April 17, contrary to prior practice, employee Ward stood by Messer's machine and observed Messer's work the entire day. The following morning, Union attorney Ronald Janetzke telephoned Hollander and informed him that Messer had joined the Union (TXD 9; Tr. 261). That afternoon, when Messer was about to leave work for the day, Hollander called her aside and advised her that "he had been watching [her] and [her] attitude towards [her] work" and that "he didn't think [she] was going to make it." When Messer protested that her 90-day probationary period was not yet over, Hollander simply repeated that "he didn't think [she] would make it." Hollander then gave Messer her check and she left. Messer's discharge took place on a Thursday, before the end of her normal work week, and she received only four days pay. (TXD 9; Tr. 163, 167-168, 261-262).

4. Claudine Tackett

Employee Claudine Tackett was the leading Union adherent at the plant. Tackett was hired in January, 1967, and six months later, in July, she was instrumental in arranging for the employees' first Union meeting (TXD 10; Tr. 21, 174 NLRB No. 103). Tackett helped solicit Union authorization cards from employees, was the Union observer at the election on September 14, 1967, and was the object of Hollander's outrage as soon as the results of the election had been announced. Hollander was particularly bitter towards employee Tackett because he regarded her support for the Union as a betrayal of his earlier kindness in giving her a check for \$50 to help her meet financial difficulties (174 NLRB No. 103).⁵

After the hearing in *Tiidee I*, and after a layoff of over five and one half months, Tackett was again recalled to work on March 12. Before Tackett resumed her duties, however, Hollander took her into his office, and, in the presence of supervisors Mary Burgher and Mel Hershey, admonished her that she "had to get a few things straight." Hollander advised Tackett that "he was tired of [her] doing bad work" and that she "was not to cause any more trouble." Hollander then instructed Tackett as to her new work rules: she was not to leave her work area to get the boxes she needed, and that these boxes would be brought to her and later removed to the shipping area by other employees; she was not to seal her boxes so that Hollander could personally check her work; and she was no longer to keep her own production records. Moreover, whereas Tackett

⁵ Consequently, after Tackett's Union affiliation became known to him, Hollander demanded that she repay him the \$50. The day after the election, Tackett was laid off. She returned to work on September 25, 1967, but several days later was again laid off. Although both layoffs were attributed by the Company to lack of work, the Board found in *Tiidee I* that the layoffs were, in fact, discriminatorily motivated in violation of Section 8(a)(3) and (1) of the Act, and that they were intended by Hollander as retaliation for the Union's election victory (174 NLRB No. 103).

had previously cut and wound hoses for five boxes at one time and then placed couplings on these hoses, she was now to complete the entire process for one box at a time. (TXD 10-11; Tr. 24-29).

On March 13, Hollander came to Tackett's work station and asked her if she had read the new work rules. When Tackett replied that she had not yet read the rules, Hollander inquired if she would like to. Tackett then proceeded to read the rules while Hollander walked back and forth until she was finished. At that point, Hollander informed Tackett that she "had to get out 27 boxes a day . . . because [otherwise] he wasn't making no money on the job." (Tr. 32).⁶ Tackett had never completed 27 boxes in one day, and she told Hollander that she did not have the capability to do so (TXD 11; Tr. 30-32, 38-39).

About a week later, on March 20, Hollander called Tackett into his office and asked her if she had worked on 15 foot hoses that day. When Tackett replied that she had, Hollander confronted her with a hose that had been improperly fitted with three couplings and inquired if the hose was her work. Tackett answered that she could not tell because all that day several other employees had also been working on the same size hose. Hollander then handed Tackett a written warning notice, and told her that if she received a second notice it "would mean a 3-day layoff" (TXD 11; Tr. 39-41, G.C. Exh. 4A).⁷

Approximately two weeks thereafter, Hollander complained to Tackett that she had packed a box of hoses which was one hose short. Tackett explained that this was impossible because she had counted tags for each

⁶ Prior to the Union election in September, 1967, Tackett and her fellow employees had only produced 12 or 13 boxes a day and Hollander never said anything to them about it (TXD 11; Tr. 32).

⁷ Such discipline was specified by the Company's newly posted work rules (See p. 5, *supra*).

hose before she assembled the hoses, and if she had been one hose short she would have been aware of this since there would have been an extra tag left over. Hollander replied simply that "he just wanted [Tackett] to be careful" (TXD 11; Tr. 42-43).

On April 17, Hollander came to Tackett's work area and led her over to the shipping department where he showed her a box marked for 15 foot hoses which was mispacked with hoses 10 feet long. Hollander blamed Tackett for the error, and told her that he was giving her a second written warning and was laying her off for three days. Tackett disclaimed any responsibility for the error. However, since other employees had been doing the same work as Tackett and could have been responsible for the mistake, Tackett could not conclusively prove that the faulty work was not hers. (TXD 11; Tr. 43-45, G.C. Exh. 4B).

A short time after Tackett had returned from her layoff, Hollander complained to her that he was tired of her quitting early and that in the future she was to stop work at exactly 4:30 p.m. Before this, Tackett and the other employees had — in accordance with established Company practice — been quitting at 4:25 p.m. so that they would wash up before leaving at 4:30 p.m. (TXD 11; Tr. 47-48).

In early April, Tackett was switched from her job in the plastics department and assigned to operate a drill machine. At the end of the month, Hollander reassigned Tackett to the elbow machine despite her protestations that she was afraid to operate it. That same morning a new employee was hired to take Tackett's place at the drill machine (TXD 11; Tr. 50-52, 81-82).

Operating the elbow machine was quite strenuous, and the employee working it was required to brace herself with one foot up against the machine and, using a pair of long pliers, pull at a plastic form until it was

completely extruded from the machine. This process would then be repeated. Tackett operated the machine for a day and a half without relief, but then began to have pain in her foot, which had been injured in an automobile accident the preceding August. Tackett therefore asked supervisor Burgher to relieve her with another employee for about an hour. Burgher responded that she would have to ask Hollander about this, and about an hour and a half later Hollander appeared at the machine. Hollander told Tackett that it was "too late" for him to relieve her that day, that Tackett would be off in 45 minutes, and that he would see about relieving her the following day. The next day, however, Tackett did not report for work, and she remained away from the plant until May 6. At that time, Tackett advised Hollander that she would not work at the elbow machine because "if [she] got sick on there [she was] afraid [he] wouldn't take [her] off." Hollander replied that there was no other work for Tackett to do, and that "he would call [her] when he had some work for [her]" (TXD 11-12; Tr. 55-60).

Tackett did not hear from Hollander, and on May 16, accompanied by her father, she went back to the plant to pick up her check. Tackett's father entered the office, and asked the secretary for Tackett's pay. The secretary immediately called Hollander, and Hollander, after a rather acrimonious exchange with Tackett's father, ordered him out of the plant. Hollander then spotted Tackett who was standing in the doorway to the office, and inquired as to why she had not called in and if she had quit. Tackett denied that she had quit, and Hollander then went back into his own office and reappeared with a written warning notice which he gave to Tackett. The notice was dated May 5, and was designated "3rd warning notice." The remarks column stated as follows: "Violation #6. Gross insubordination. Refused to operate a machine you were assigned to." After giving Tackett the notice, Hollander told her, "Now, you are fired." (TXD 12; Tr. 319-322, 61-69, G.C. Exh. 4C).

5. Phyllis Wilson

Employee Phyllis Wilson was hired on November 22, 1966, and was laid off several times shortly after the Union's election victory in September, 1967, ostensibly because of lack of work. However, as was the case with employees Haywood and Tackett, the Board found in *Tiidee I* that Wilson was laid off by the Company for discriminatory reasons in violation of Section 8(a)(3) and (1) of the Act. Wilson returned to work before the hearing in *Tiidee I*, and testified adversely to the Company at the hearing. (TXD 13; Tr. 181).

Several weeks later, employee Connie McGoon, who worked at the elbow machine, was out sick, and Hollander asked Wilson to take McGoon's place at the machine. Prior to this time Wilson had always worked at the assembly table. McGoon returned to work the next day, and she and Wilson then alternated on the elbow machine, each taking half day turns. This arrangement continued for a few weeks until McGoon hurt her finger, and was unable to take her turn at the elbow machine. Wilson then ran the machine by herself for the next month without being given any relief. When Wilson spoke to supervisor Burgher as to why employee McGoon — who was apparently healthy again by this time — no longer relieved her on the machine, Burgher replied that she knew nothing about this and that if Wilson had any complaints she should take them to Hollander. (TXD 13; Tr. 184-187).

On Monday, April 15, Wilson decided that it was too difficult for her to run the elbow machine by herself, and that she would not continue to work at the machine unless she could get relief. Wilson did not go to work that day, but called Union attorney Janetzke to speak to him about the problem. Janetzke advised Wilson to go to the plant and ask Hollander to give her relief, but Wilson declined to confront Hollander by herself.

Janetzke then asked Wilson if she would go see Hollander accompanied by Union representative Creola Reese, and Wilson agreed to do so. The following day, Wilson and Reese went to the plant, and after Hollander had been summoned to the office, Reese told him that she was there on behalf of employee Wilson who had been running the elbow machine by herself all day without any relief. The conversation immediately became abusive and Hollander told Reese that she should see his business representative, Harvey Rector, if the Union had any complaints. After a few sharp exchanges, Reese, and perhaps Wilson, were ordered by Hollander to leave the plant. They then went to see Union attorney Janetzke who called Rector and explained what had happened. Rector replied that Wilson had indicated animus towards Hollander because of her adverse testimony at the hearing in *Tiidee I*, but he agreed to speak to Hollander about the problem. Later that same day, Rector telephoned Janetzke and informed him that Hollander insisted that Wilson would be required to work under the conditions he assigned, if she wished to continue working for him (TXD 13-14; Tr. 189-194, 254-258, 265-268).

On April 19, Wilson and her husband went to the plant to pick up her check. Wilson's husband went in alone at first, but then came back to the car and told his wife that Hollander wanted to speak to her. Wilson went into the office, and Hollander told her that he had not ordered her out of the plant the other day, but only Reese ("that thing she was with") (Tr. 201). Hollander then advised Wilson that "if he was [her] husband . . . he would be careful . . . who he let [her] associate with, and that he wouldn't be seen with Mrs. Reese [because] she was as low as dirt, and even her own kind wouldn't associate with her." (*ibid.*). During the conversation, Hollander asked Wilson why she had not come back to work, and Wilson answered that she had received a phone call from Janetzke telling her that she had been fired. Hollander remarked that Janetzke

perhaps knew more about the matter than he (Hollander) did, but Wilson told him that it made no difference because she had quit. Hollander then advised Wilson that her failure to call in for three days constituted an automatic quit, and complained that she had insulted him by referring to his actions as "juvenile" at the hearing in *Tiidee I.* (TXD 14; Tr. 200-208, 220, 414-415).

II. THE BOARD'S CONCLUSION AND ORDER

The Board concluded that the Company violated Section 8(a)(1) of the Act by promulgating and maintaining illegal no-solicitation and no-distribution rules, interrogating employees concerning union matters, and admonishing employees not to associate with Union adherents. The Board further concluded that the Company violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging employees Leffler and Messer, and violated Section 8(a)(3), (4) and (1) of the Act by discriminatorily discharging or forcing the termination of employees Haywood, Tackett and Wilson. The Board also concluded that the Company violated Section 8(a)(3), (4) and (1) of the Act by issuing warning notices to employees Wells and Tackett, thereby changing their working conditions in retaliation for their Union adherence and adverse testimony at a prior Board unfair labor practice hearing. Finally, the Board concluded that the Company violated Section 8(a)(5) and (1) of the Act by adopting and posting a new set of work rules, and by instituting a probationary period of employment for new employees, without consulting or bargaining with the Union, which had been certified as the exclusive representative of its employees (Bd. D&O; TXD 16).

The Board's order requires the Company to cease and desist from the unfair labor practices found and from interfering with, restraining or coercing its employees in any other manner in the exercise of the rights guaranteed

them by Section 7 of the Act. Affirmatively the Board's order requires the Company to offer John Haywood, David Leffler, Pauline Messer, Claudine Tackett, and Phyllis Wilson full and immediate reinstatement to their former or substantially equivalent positions and to make them whole for any loss of earnings they may have suffered by reason of the discrimination against them; to rescind and withdraw the posted work rules and regulations; to rescind and delete from the personnel files of employees Wells and Tackett the warning notices heretofore given to them for alleged infractions of the posted work rules; to bargain collectively with the Union upon request and to post the appropriate notices (Bd. D&O, TXD 17-19).

ARGUMENT

I. SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDINGS THAT THE COMPANY VIOLATED SECTION 8(a)(1) OF THE ACT BY POSTING AND MAINTAINING OVERLY BROAD NO SOLICITATION AND DISTRIBUTION RULES

It is well settled that a "rule prohibiting union solicitation by an employee outside of working hours, although on company property . . . must be presumed to be an unreasonable impediment to self organization and therefore discriminatory in the absence of evidence that special circumstances make the rule necessary in order to maintain production or discipline." *Republic Aviation Corp. v. N.L.R.B.*, 324 U.S. 793, 803-805 (1944), approving the Board's position set forth in *Peyton Packing Co.*, 49 NLRB 828, 843 (1943); accord: *Republic Aluminum Co. v. N.L.R.B.*, 394 F.2d 405, 406-408 (C.A. 5, 1968); *United Steelworkers of America, AFL-CIO v. N.L.R.B., (Luxaire, Inc.)*, 129 U.S. App. D.C. 260, 262, 393 F.2d 661, 663 (1968). It is equally well settled that a rule prohibiting employee distribution of union literature on company property is presumptively invalid if the prohibition extends to distribution in non-working areas and during non-working time. *Republic Aviation Corp. v. N.L.R.B.*, *supra*; *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615, 619-622 (1962); accord: *Food Store Employees v. N.L.R.B.*, ____ U.S. App. D.C. ____, ____, F.2d ____, ____, 71 LRRM 3004, 3006 (1968) (" . . . an employer may not prohibit an employee . . . from distributing organizational literature in nonselling, nonworking areas . . . "); *N.L.R.B. v. United Aircraft Corp., Pratt & Whitney Aircraft Division*, 324 F.2d 128, 129, 131 (C.A. 2, 1963), cert. denied, 376 U.S. 951.

In the instant case, after the election, the Company promulgated rules which, *inter alia*, prohibited:

- A) Soliciting or collecting contributions for any purpose whatsoever, on company premises, without the approval of the management.
- B) Distribution of literature, written or printed matter of any description on company property, not incidental to company business. [TXD 3, Tr. 20, G.C. 2]

As can be seen, the rules on their face apply to all solicitation as well as all distribution of literature anywhere on Company property and at any time. They make no distinction between solicitation on working and non-working time or between distribution in working and non-working areas.⁸ The record does not reveal any special circumstances which would justify these broad and presumptively invalid prohibitions. Hence, in accordance with the established principles set forth above, the Board properly found the Company's no solicitation and no distribution rules violative of Section 8(a)(1).

II. SUBSTANTIAL EVIDENCE ON THE RECORD SUPPORTS THE BOARD'S FINDING THAT THE COMPANY VIOLATED SECTION 8(a)(5) AND (1) BY PROMULGATING NEW WORK RULES WITHOUT BARGAINING WITH THE UNION AND ALSO VIOLATED SECTION 8(a)(4), (3) AND (1) BY ISSUING WARNING NOTICES FOR VIOLATIONS OF THE NEW RULES

As related in the Statement (*supra*, p. 5), the no distribution and solicitation rules referred to above were simply part of a comprehensive set of work rules which the Company posted in January, 1968, about

⁸ Even assuming *arguendo* a different interpretation were possible, any ambiguity in the scope of the rules must be held "against the promulgator of the rule rather than against the employees who are supposed to abide by it." *N.L.R.B. v. Miller*, 341 F.2d 870, 874 (C.A. 2, 1965), quoted with approval in *N.L.R.B. v. Lexington Chair Co.*, 361 F.2d 283, 287 (C.A. 4, 1966). Accord: *Jas. F. Matthews & Co. v. N.L.R.B.*, 354 F.2d 432, 441 (C.A. 8, 1965), cert. denied 384 U.S. 1002; Cf. *N.L.R.B. v. Campbell Soup Co.*, 380 F.2d 372 (C.A. 5, 1967).

two-and-a-half months after the Board had certified the Union as bargaining agent and several weeks after completion of the hearing before the Trial Examiner in *Tiidee I*. In totality, the new rules clearly affected the employees' terms and conditions of employment, particularly since they contained an elaborate disciplinary provision for their infraction (*supra*, p. 5). Accordingly, they were a mandatory subject of bargaining within the meaning of Section 8(d) of the Act. Yet, the Company admittedly promulgated and implemented them without notifying the Union and giving it the opportunity for bargaining. Clearly, this violated Section 8(a)(5) and (1) of the Act.⁹ *N.L.R.B. v. Miller Brewing Co.*, 408 F.2d 12, 14 (C.A. 9, 1968). See *Fibreboard Paper Products Corp. v. N.L.R.B.*, 379 U.S. 203, 222 (1964); *N.L.R.B. v. Katz*, 369 U.S. 736, 748 (1962); *N.L.R.B. v. Gulf Power Co.*, 384 F.2d 822, 824-825 (C.A. 5, 1967); *N.L.R.B. v. Laney & Duke Storage Co.*, 369 F.2d 859, 866 (C.A. 5, 1966); *Timken Roller Bearing Co.*, 70 NLRB 500, 502 n. 3 (1946), set aside on other grounds, 161 F.2d 949 (C.A. 6, 1947).

The Company's defense that the rules antedated the advent of the Union was unsubstantiated by any evidence except President Hollander's testimony that they had been posted until destroyed by a fire. However, Hollander acknowledged that the fire had occurred two years previously and the rules had not been re-posted (TXD 3; Tr. 398). He further stated that the prior posting contained only some of the 34 rules which were posted after the Union was certified, as indeed is corroborated by the fact that the earlier posting was done on a small 3 x 5 card whereas the later

⁹ Essentially the same rationale applies to the Company's unilateral institution of a 90-day probationary hiring practice, which the Board also found to violate Section 8(a)(5) of the Act. That the probationary period was not instituted until Pauline Messer was hired, after the certification of the Union, was established by the credited and unrefuted testimony of employee Wells, who had been with the Company for 16 years. (TXD 15; Tr. 237).

posting required a sheet 8 x 11 inches in size (TXD 3; Tr. 398, G.C. Exh. 2). Accordingly, the Trial Examiner quite properly found that even accepting the unsupported assumption "that some of [the rules] had been posted years ago [nevertheless] they had been abandoned by lapse of time and were unilaterally revived and invoked" (TXD 15).

Since the work rules themselves were unlawfully promulgated and put into effect, it follows, as the Board found (TXD 15), that the warning notices issued to employees Tackett and Wells for alleged infractions of those rules were unlawful. *King Radio Corp. v. N.L.R.B.*, 398 F.2d 14, 17 (C.A. 10, 1968). But even aside from the underlying illegality of the work rules, the notices violated Section 8(a)(3), (4) and (1) of the Act in any event, as the Board also found (TXD 15). Thus, Tackett was a leading Union supporter, as Hollander knew, and Wells had testified adversely to the Company in *Tiidee I* (*supra*, pp. 5-6, 11). Both employees were subjected to other forms of unlawful harrassment by Hollander: in Well's case, extremely hostile interrogation about his appearance as a witness in *Tiidee I* (*supra*, p. 6); in Tackett's case, a prior layoff and then an increase in her production quota, assignment to an unusually onerous task and eventual discharge (*supra*, pp. 11-14). Furthermore, although the Trial Examiner found it unnecessary to state categorically that the two employees did not commit the infractions for which they received disciplinary warnings, he did conclude that both had at least raised reasonable doubts about their responsibility for the acts complained of by Hollander (TXD 15; and see *supra*, pp. 6, 12, 13). In these circumstances, the Board was warranted in inferring that the warning notices issued to Tackett and Wells were simply part of the broader pattern of retaliation which, as the totality of the evidence so well demonstrates, the Company pursued against employees who supported the Union or gave testimony favorable to it in Board proceedings.

III. SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDINGS THAT THE COMPANY VIOLATED SECTION 8(a)(1) OF THE ACT BY INTERROGATING AN EMPLOYEE CONCERNING DISCUSSIONS WITH COUNSEL FOR THE GENERAL COUNSEL AND FOR THE UNION AT A PRIOR UNFAIR LABOR PRACTICE HEARING, AND BY WARNING AN EMPLOYEE AGAINST ASSOCIATING WITH EMPLOYEES WHO SUPPORTED THE UNION

As indicated previously (*supra*, p. 6), shortly after the hearing in *Tiidee I*, president Hollander summoned employee Wells, who had testified adversely at the hearing, to the former's office and accused him of having made inconsistent statements in his testimony. Hollander then questioned Wells about his conversations with counsel for the General Counsel and Union counsel in the course of the hearing. The Board correctly found that such interrogation "can be reasonably equated with that regarding the contents of affidavits given to Board agents by employees, which under well-settled Board law has been found violative of Section 8(a)(1) of the Act." (TXD 5). *Joy Silk Mills v. N.L.R.B.*, 87 U.S. App. D.C. 360, 371, 185 F.2d 732, 743 (C.A.D.C., 1950); *Texas Industries, Inc. v. N.L.R.B.*, 336 F.2d 128, 133-134 (C.A. 5, 1964); *N.L.R.B. v. Henry I. Siegel Co.*, 328 F.2d 25, 27 (C.A. 2, 1964). Certainly, the record affords no basis here for excusing Hollander's conduct on the ground that it was undertaken with any legitimate purpose in mind, as, for example, to assist the Company in presenting its case to the Board after the Trial Examiner's hearing in *Tiidee I*. Indeed, given Hollander's belligerent and badgering manner in his confrontation with Wells, (*supra*, p. 6) it appears that Hollander had no other motive except to intimidate Wells.

Also coercive and without legitimate purpose was Hollander's admonition to employee Leffler on April 12 that Leffler "should be careful" about his associations because "he could get into big trouble" (*supra*, pp. 8-9).

The record shows that Leffler interpreted this to be a warning against social contacts with pro-Union employees, and the Board properly found that this is what it was in fact. Thus, immediately beforehand, Hollander had asked Leffler whether he was intimate with any of the other employees, specifically mentioning Wilson and Messer. Wilson was known to be a vigorous supporter of the Union, and Messer several days previously had declined an invitation to eat lunch with supervisor Burgher, stating that she was going to sit with Wilson instead (TXD 9; Tr. 158). Significantly, Messer was thereafter approached by Burgher and Ward, an anti-Union employee, and warned about her associations (TXD 9; Tr. 158-159). Significantly also, Messer, Wilson and Leffler were all subsequently discharged — discriminatorily as the Board found (*infra*, pp. 26-28, 30-31). Hollander explained to Leffler at the time of the latter's discharge that the admonition found violative of Section 8(a)(1) here had nothing to do with the Union, but merely was a caution against immoral relationships between men and women employees which could lead to "blackmail" (*supra*, p. 9). In the context of events in this case, we submit this belated explanation on Hollander's part was properly discredited by the Trial Examiner since it appears to have been an afterthought designed solely to neutralize evidence — the threat not to associate with pro-Union employees — tending to highlight the discriminatory nature of Leffler's discharge. See generally, *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 617-620 (1968); *Int'l. Union, A. A. & A. Imp. Workers v. N.L.R.B.*, 129 U.S. App. D.C. 196, 200-201, 392 F.2d 801, 805-806 (1967); *N.L.R.B. v. Stanton Enterprises, Inc.*, 351 F.2d 261, 264 (C.A. 4, 1965); *N.L.R.B. v. Lowell Sun Pub. Co.*, 320 F.2d 835, 838, 840 (C.A. 1, 1963).

IV. THE COMPANY VIOLATED SECTION 8(a)(3) AND (1) OF THE ACT BY DISCRIMINATORILY DISCHARGING EMPLOYEES LEFFLER, MESSER, TACKETT, HAYWOOD AND WILSON. THE DISCHARGES OF TACKETT, HAYWOOD AND WILSON ALSO VIOLATED SECTION 8(a)(4) OF THE ACT.

An employer who is motivated by anti-union considerations in actually or constructively discharging employees violates Section 8(a)(3) of the Act. If the discharges are also intended to punish the employees for their testimony in a Board proceeding, the employer violates Section 8(a)(4) as well.

"[A]ntiunion bias and demonstrated unlawful hostility are proper and significant factors for Board evaluation in determining motive." *N.L.R.B. v. Dan River Mills, Inc.*, 274 F.2d 381, 384 (C.A. 5, 1960). Here, Company President Hollander's deep and abiding opposition to the Union and his propensity for violating the rights guaranteed to his employees by the Act manifested themselves almost as soon as the Union drive had begun. Thus, as the Board's decision in *Tiidee I* demonstrates, shortly after the Union appeared on the scene, Hollander and his supervisors sought to learn the identity of Union supporters by coercively interrogating and polling the employees and by attempting to pressure employee Haywood into acting as an informer (174 NLRB No. 103, slip opinion of Trial Examiner, p. 6). The employees were also threatened with plant closure if they selected the Union as their majority representative (*Id.*, at p. 6 of slip opinion of Trial Examiner). When the Union nevertheless won the election and was certified as the bargaining representative by the Board, the Company obdurately refused to recognize and bargain with the Union. The grounds for the Company's refusal were so weak that it later abandoned them entirely when the Board sought enforcement of its order in *Tiidee I* in this Court. Moreover, in the post-election period, Hollander harassed the employees by large-scale layoffs, the discharge of two employees,

and an increase in the production quota of two other employees — all in violation of Section 8(a)(3) and (1) of the Act (*Id.*, at pp. 9-12 of slip opinion of Trial Examiner).

The pattern of unlawful conduct which resulted in the foregoing unfair labor practice findings against the Company in *Tiidee I* continued after the hearing in that case, as indeed has already been shown by our discussion of the posting of new work rules, the warning notices issued to Wells and Tackett, the interrogation of Wells as to his testimony, and the threat to Leffler. However, Hollander's actions with respect to employees Leffler, Messer, Tackett, Haywood and Wilson, to which we now turn, present an even more striking indication that the Company had by no means abandoned its extensive use of illegal tactics to defeat the Union. For Hollander's treatment of these individuals can only be explained by his persistent determination to purge the Company of employees who were known or suspected to be Union sympathizers by either discharging them outright or deliberately making their working conditions so intolerable that they would be driven into "an involuntary quit." See *N.L.R.B. v. Kinter Bros., Inc.*, ___ U.S. App. D. C. ___, ___ F.2d ___, ___ (C.A. D.C., Nos. 21,551 and 21,615, July 10, 1969), 71 LRRM 2935, 2937, quoting with approval *N.L.R.B. v. Tennessee Packers, Inc.*, 339 F.2d 203, 204 (C.A. 6, 1964).

Thus, *David Leffler* had been hired by the Company in mid-March to run a sander and finishing machine, and was discharged by Hollander on April 13. As related earlier (*supra*, pp. 8-9), on April 12, Hollander had signified his concern about Leffler's associations with Union sympathizers by questioning him as to his contacts with employees Phyllis Wilson and Pauline Messer and admonishing him, in effect, to steer clear of these individuals. Hollander followed this up the next day, a non-work day, by specially calling Leffler in and inquiring whether Leffler had

heeded Hollander's admonition of the previous day (*supra*, p. 9). When Leffler then acknowledged he had dated Messer that night, Hollander discharged Leffler, asserting that he was inefficient and had caused damage, to some castings by leaving them in his machine overnight (*supra*, p. 9). However, Leffler had never received any prior warning that his performance was unsatisfactory. On the contrary, Hollander had told him on the day immediately preceding his discharge that his work was good and that Hollander expected that he would remain with the Company a long time (TXD 8; Tr. 113, 107-108). And as for the castings, Leffler credibly testified, without contradiction and with corroboration from employee Haywood, that Hollander himself had previously given instructions that unfinished castings were to be left in the finishing machine at the end of the day because they would be taken care of by another employee who worked overtime (TXD 8-9; Tr. 118-120, 122-124). In short, Hollander's asserted reasons for discharging Leffler simply do not ring true. Rather, the evidence warrants an inference that Leffler was fired, not because of inferior work, but because Hollander feared he was becoming too friendly with employees who were pro-Union and would eventually wind up favoring the Union himself.

The story as to *Pauline Messer* is essentially the same as Leffler's, except the anti-union discrimination is even more obvious. Thus, Messer was hired as a 90-day probationary employee on March 27. The Company soon became aware of the possibility that Messer might join the ranks of the Union supporters when, on April 1, she chose to eat lunch with a leading Union activist, employee Wilson, in preference to sitting at supervisor Burgher's table (*supra*, p.10. Possibility became actuality on April 15 when Messer signed a Union card. Hollander was advised of this on April 18 by the Union's attorney (*supra*, p. 10). Six hours later, Hollander discharged Messer, without permitting her to finish out

the week, much less the remainder of her probationary period. The stated reason for the discharge was her "attitude" and that Hollander did not think she was "going to make it" (TXD 9; Tr. 163, 167-168, 261-262). Up to that point, however, no one in authority had advised Messer of any shortcomings in her work. Nor did Hollander point out to Messer any specific incident indicating a deficiency. Instead, on a prior occasion, Hollander had told Messer that he had received favorable reports about her work, and two days before Messer's discharge Hollander had said she was "a very good worker" (TXD 10; Tr. 161, 166). The logical inference from the foregoing is that Hollander's sudden change of mind about Messer had nothing to do with the quality of her work, but was caused by her signing a Union card. Here, indeed, the "abruptness of a discharge and its timing are persuasive evidence as to motivation." *N.L.R.B. v. L. E. Farrell Co.*, 360 F.2d 205, 208 (C.A. 2, 1966); cf. *Corrie Corp. v. N.L.R.B.*, 375 F.2d 149, 152-153 (C.A. 4, 1965).¹⁰

Claudine Tackett had initiated the Union drive at the plant, had served as the Union's observer in the election, and had testified adversely to the Company in *Tiidee I* (TXD 10; Tr. 21). Hollander was particularly bitter about what he viewed as Tackett's disloyalty to him since he had

¹⁰ Before the Board, the Company contended that Messer took long coffee breaks and participated in the removal of a curtain next to her machine which resulted in damage to a neighboring machine (TXD 10; Tr. 160-161). The Trial Examiner quite properly refused to accept the Company's argument that these matters played any significant part in Messer's discharge, since they had never been brought to her attention either when she was working for the Company or at the time she was discharged. Moreover, the Examiner was unwilling to accept that, given Hollander's overwhelming hostility to the Union, it was just coincidence that Hollander's decision to discharge Messer was made so soon after he learned she had signed a Union card. Furthermore, the Examiner credited Messer's denial that she had taken long coffee breaks (TXD 10; Tr. 172-173), although he considered it unnecessary to determine whether the curtain next to Messer's machine had actually been partially opened or entirely removed before she was hired (TXD 10, fn. 23).

sent her a check for \$50 in August, 1967, when Tackett was convalescing from a foot injury (*supra*, p. 11). In fact, as soon as the results of the Union victory in the election had been announced, Hollander had grabbed Tackett's arm and spun her around, exclaiming "Do you mean . . . after all I've done for you . . . I [gave] you \$50 to save your house" (174 NLRB No. 103, slip opinion of Trial Examiner, pp. 7, 9). Tackett, as the Board found in *Tiidee I*, was the first employee to be discriminatorily laid off by Hollander after the election (*Id.*, at p. 9 of slip opinion of Trial Examiner). With the exception of a one-week recall, the layoff continued until March 12, when Tackett was again recalled. On that day, Hollander changed her work procedures, as the Trial Examiner found, "by restricting her to her work area, her boxes were to be brought to her and later removed to the shipping area, Hollander was to inspect her work, and she no longer was to keep a record of her production" (TXD 10-11; Tr. 25-26, 27). These changes did not apply to the other employees (Tr. 277-278). On March 13, Hollander told Tackett that she had to increase her production to 27 boxes per day, although prior to the election she had produced only 12 or 13 boxes a day and had not been pressured to augment her production (TXD 11; Tr. 32). Later that week, Hollander reprimanded her for quitting at 4:25 p.m. instead of at 4:30 p.m., even though the established practice at the plant was for the employees to stop working five minutes early in order to wash up before leaving (TXD 11; Tr. 47-48). Thereafter, as related earlier, Tackett received several warning notices for offenses which were not proved to have been hers and for which she disclaimed responsibility (*supra*, pp. 12-13). Finally, at the end of April, Tackett was assigned to run an "elbow" machine, although she had never run it before and it was harder to operate than the equipment Tackett had been using (TXD 11, fn. 30; Tr. 52-56, 302). Tackett's protestations that she was fearful of working on that particular machine went unheeded. When Tackett finally requested relief because her foot hurt, the

Company procrastinated until it was too late in the day for a relief (TXD 11-12; Tr. 55-60). The result was that Tackett did not report for work the next day. Instead, she showed up at the plant on May 6, and advised Hollander that she would not operate the elbow machine because she was afraid Hollander would not relieve her in the event she became ill and that he might do something to the machine "to mess her up" (TXD 12; Tr. 84). Hollander then laid her off, saying there was no other work.¹¹ A week and a half later, Tackett came to the plant, accompanied by her father, and asked for her paycheck. Hollander asked her why she had quit, and when Tackett denied quitting, Hollander told her "now you are fired" as he gave her the requested paycheck (TXD 12; Tr. 319-322, 61-69, G.C. Exh. 4C). These facts, we submit, more than suffice to establish that Hollander was engaged in a calculated effort to force Tackett into either leaving the Company or furnishing a suitable pretext which would permit Hollander to discharge her. Nor, in the circumstances, can there be much doubt that Hollander wanted to rid himself of Tackett because of her leading role in the Union and her testimony in *Tiidee I*.

Phyllis Wilson's situation was much like Tackett's. She, too, had been an active Union adherent who had been discriminatorily laid off, was thereafter recalled, and then testified adversely to the Company in *Tiidee I* (TXD 13; Tr. 133). Hollander particularly resented Wilson's testimony as personally degrading to him because she had described him as being "juvenile" (TXD 14; Tr. 200-208, 414-415). A few weeks after the

¹¹ This apparently was untrue since, on the day of her lay-off, it appears "there was plenty of plastic to sort" (Tr. 78). Indeed, Tackett had been informed the previous day that there were two truckloads of material to be sorted (*ibid.*). Moreover, it was Company policy to have a ready inventory on hand, and at the time of Tackett's lay-off there were practically no 10 or 15-foot hoses in stock, although there were outstanding orders for those products (Tr. 60-61).

Tiidee I hearing, Wilson was assigned to run the elbow machine because the regular operator was ill (TXD 13; Tr. 185). Wilson had previously been in the assembly department and had never before operated either the elbow or moulding machines or the drill (TXD 13; Tr. 183). When the regular operator recovered, she and Wilson alternated on the elbow machine until the regular operator hurt her finger. Then Wilson operated the machine alone all day for the following month, even though it was Company practice for two girls to alternate on that machine for half a day at a time (TXD 13; Tr. 186-187). Wilson's pleas for relief were summarily denied, which finally caused her to quit (*supra*, pp. 16-17). The assignment of Wilson, a known Union advocate whose testimony in *Tiidee I* had strongly displeased Hollander, to a difficult and onerous task for a long period of time and, contrary to established practice, without relief, amply supports the inference that Hollander was intent on driving Wilson from the Company's employment for discriminatory reasons. Indeed, if this were not what motivated Hollander, there would have been little point to the remark of the Company's labor relations adviser, made when Wilson and Union representatives went to discuss the matter of obtaining relief for Wilson with him, to the effect that Wilson had indicated animus towards Hollander by her testimony in the prior hearing (*supra*, p. 16).

Finally, with respect to *John Haywood*, the record is crystal clear that he left his job with the Company because his parole officer advised him to do so and, as a parolee, he was obviously in too delicate a position not to take the advice (*supra*, pp. 7-8). What is determinative here, however, is that Haywood's parole officer was simply responding to pressure from Hollander, who knew Haywood favored the Union.¹² Thus,

¹² As *Tiidee I* reveals, Hollander had used Haywood's criminal record and parole to browbeat Haywood into acting as an informer (174 NLRB No. 103, slip opinion

(cont'd)

several months after the election, Hollander called the parole officer to complain that Haywood had become too involved in Union activities (*supra*, p. 7). And after the hearing in *Tiidee I*, Hollander told the parole officer that Haywood should quit because he had lied about Hollander in the *Tiidee I* proceedings (*supra*, p. 8). Hollander's other complaints that Haywood used profanity in the plant and did not diligently apply himself to his work receive little support from the record. In fact, Haywood had been praised for his work and had never been warned about his conduct or his language (TXD 6-8; Tr. 129-130, 139, 144). Accordingly, Hollander's complaints "were pretextual and intended to mask Respondent's union animus" (TXD 8).

In sum, as outlined above, we submit that the Board's conclusion that the Company violated Section 8(a)(3), (4) and (1) of the Act by discharging, either outright or constructively, employees Leffler and Messer for anti-union reasons and employees Tackett, Wilson and Haywood for both anti-union reasons and because of their testimony in *Tiidee I*, is supported by substantial evidence. *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488 (1951).

V. THE BOARD'S ORDER IS VALID AND PROPER

The Union here argues that the Board's remedy is inadequate and that the Company should have been required to compensate the employees for all wages and benefits they would have received but for the Company's

(Footnote 12 continued)

of Trial Examiner p. 6). Later, however, Haywood voted for the Union and was subsequently discriminatorily laid off in December 1967. When Haywood returned on December 29 to pick up his paycheck, he was asked by Hollander how he had voted in the election. Haywood admitted that he had voted for the Union, and Hollander replied, "I know you did. I just wanted to see what you would say about it" (174 NLRB No. 103, slip opinion of Trial Examiner, p. 12).

unlawful refusal to bargain. This same point was urged by the Union in *Tiidee I* where, indeed, it was somewhat more apropos since the Board there determined that the Company violated Section 8(a)(5) of the Act by its general refusal to recognize and bargain with the certified union. If this Court, which now has *Tiidee I* under consideration, should remand that case back to the Board for reconsideration of the Union's requested remedy, then we submit that there is no need to also remand the instant case back to the Board as well. For the identical relief is requested in both cases, and the Union will get no more with two requests for the same thing than with one request. Thus, the Board's order here, if otherwise entitled to enforcement, should simply be enforced. On the other hand, if this Court should agree with the Board in *Tiidee I* that the Union's request for further remedial relief is without merit, we submit the same result should follow in this case since it does not present any more compelling reason for the additional relief than was presented by *Tiidee I*.

CONCLUSION

For the foregoing reasons, the Board respectfully submits that the Union's petition for review should be denied and that a decree should issue enforcing the Board's order against the Company in full.

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National Labor Relations Board.

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Nos. 23,209 & 23,321

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,209

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND
MACHINE WORKERS, AFL-CIO, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

No. 23,321

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

TIIDEE PRODUCTS, INC., RESPONDENT.

ON PETITION TO REVIEW AND APPLICATION TO ENFORCE AN
ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE INTERNATIONAL UNION OF
ELECTRICAL, RADIO AND MACHINE WORKERS,
AFL-CIO, PETITIONER IN NO. 23,209

United States Court of Appeals
for the District of Columbia Circuit

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BRIEF FOR THE INTERNATIONAL UNION OF ELECTRICAL,
RADIO AND MACHINE WORKERS, AFL-CIO

STATEMENT OF ISSUES PRESENTED

1. Whether substantial evidence supports the Board's finding that the Company violated Section 8(a)(1) of the Act by promulgating and maintaining rules which threatened employees

with discipline and discharge by engaging in the solicitation or distribution of literature of any kind on Company property; by interrogating an employee as to what he had discussed with counsel for the Board's General Counsel and the attorney for the Union at a prior (officially reported at 174 NLRB No. 103) unfair labor practice hearing; and by warning an employee against associating with other employees who supported the Union.

2. Whether substantial evidence supports the Board's finding that the Company violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging employees David Leffler and Pauline Messer.

3. Whether substantial evidence supports the Board's finding that the Company violated Section 8(a)(3), (4) and (1) of the Act by discriminatorily discharging employees John Haywood and Phyllis Wilson.

4. Whether substantial evidence supports the Board's finding that the Company violated Section 8(a)(3), (4) and (1) of the Act by issuing disciplinary warning notices and by changing the conditions of employment of employees Bill Wells and Claudine Tackett, in retaliation of their Union adherence and testimony at a prior Board unfair labor practice hearing (174 NLRB No. 103).

5. Whether substantial evidence supports the Board's finding that the Company violated Section 8(a)(5) and (1) of the Act by adopting and posting a new set of work and disciplinary rules and by instituting a 90-day probationary period for new

employees, without consulting or bargaining with the Union which had been previously certified as the exclusive representative of its employees.

6. Whether the failure of the Board's Order to require the Company to make the employees whole for any wages and benefits that might have been received had the Company recognized the Union and thereupon negotiated, in good faith, a collective bargaining agreement was proper.

STATEMENT OF THE CASE

This case is before the Court upon the petition of the International Union of Electrical, Radio & Machine Workers, AFL-CIO (herein "the Union") to review, and application of the National Labor Relations Board (herein "the Board") to enforce an order issued against Tiidee Products, Inc. (herein "the Company") on June 24, 1969, pursuant to Section 10(c) of the National Labor Relations Act as amended (herein "the Act"). The Board's decision and order are reported at 176 NLRB No. 133 and this Court has jurisdiction over the proceedings under Section 10(e) and (f) of the Act.

This case is a sequel of International Union of Electrical, Radio and Machine Workers, AFL-CIO v. N.L.R.B. and N.L.R.B. v. Tiidee Products, Inc., Appeal Nos. 22,797 and 22,911 which were argued before this Court on October 27, 1969. These previous cases (hereinafter referred to as Tiidee I) involved the enforcement of a Board order (officially reported at 174 NLRB No. 103) based upon findings that the Company violated Sections 8(a)(1), 8(a)(3) and

8(a)(5). In Tiidee I the Union's petition was based upon the inadequacy of the relief ordered by the Board to redress the Company's refusal to recognize and bargain with the Union following its certification as majority representative on September 14, 1967.

The Union's petition in the case at bar (hereinafter referred to as Tiidee II) seeks the same remedial relief as in Tiidee I. The Section 8(a)(5) violations in Tiidee II are based upon the Company's unilateral promulgation of disciplinary work rules and conditions of employment in derogation of the Union's certified majority status as the exclusive collective bargaining agent.

In Tiidee I the Section 8(a)(3) violations were based upon the discriminatory and retaliatory discharge of eleven employees because of their union activity during the course of the representation campaign that resulted in the certification of the Union. Similarly, in Tiidee II, the Section 8(a)(3) and 8(a)(4) violations are based upon the discriminatory and retaliatory discharge of an additional five employees, Haywood (TXD 6-7; Tr. 127-132, 134-135, 143-144, 152), Leffler (TXD 5,8; Tr. 113, 107-108, 110-113), Messer (TXD 9; Tr. 154-155, 157-159, 163, 167-168, 261-262), Tackett (TXD 10-11; Tr. 24-29, 30-32, 38-45, 47-48, 50-52, 55-69, 81-82, 319-322; G.C. Exhs. 4A, 4B and 4C) and Wilson (TXD 13-14; Tr. 184-187, 189-194, 254-258, 265-268, 200-208, 220, 414-415) because of their union activity. In

Tiidee I, two of these five employees (Haywood and Tackett) were found by the Board to have been discriminatorily laid off in violation of Section 8(a)(3) of the Act and in Tiidee II the discharge of these two employees followed their recall from said layoff. Of the twenty-eight employees in the bargaining unit, nineteen voted for the Union during the certification election and as of the writing of this Brief, the Company has engaged in 8(a)(3) violations against thirteen of them.

It is presumed that the Board's brief, in support of its application for enforcement (Appeal No. 23,321), will comprehensively and satisfactorily establish that the Company's violations of Sections 8(a)(1), 8(a)(3), 8(a)(4) and 8(a)(5) are fully supported by substantial evidence on the whole record. We do not wish to burden the Court by traversing the same ground twice and we therefore refer the Court to the Board's brief for a full statement of the facts with respect to said violations.

With respect to the remedial issue, the Union's brief in Tiidee I comprehensively discussed the inadequacy of the relief that the Board ordered in that case. And in Tiidee II the Board has continued to adhere to the same pro forma 8(a)(5) order shown ineffectual in Tiidee I. The additional violations in Tiidee II makes more apparent the necessity for an effectual 8(a)(5) remedy that would restore the status quo ante by including the payment of such wages and benefits that would have been obtained had the Company bargained with the Union following its certification.

In Tiidee I the Company did not defend against or dispute the Board's findings that the Company violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union. While the Company opposed the granting of compensatory relief, the Company conceded that its non-compliance with the Board's certification of the Union was without any proper basis and unsupported by any legal defense. The refusal to bargain violations in Tiidee II are also premised upon the undisputed validity of the Union's certification as the majority representative. The disciplinary work rules and working conditions violate Section 8(a)(5) because they were promulgated by the Company in derogation of the Union's status as the exclusive bargaining representative of the employees (TXD 15).

Tiidee II is a continuation of the Company's evasion of its statutory obligation to recognize and bargain with the Union. The Union's appeal in Tiidee II is based upon the failure of the Board to provide for a compensatory 8(a)(5) remedy. This same remedy was sought by the Union in Tiidee I and in that the necessity thereof is certainly no less in Tiidee II, the Union respectfully refers the Court to its brief and argument (pp. 9-21) in Tiidee I which supports its contention that the Board's 8(a)(5) order was inadequate and improper.

ARGUMENT

The precise issue presented in this case was previously before this Court in International Union, UAW v. N.L.R.B., 129 U.S. App. D.C. 196, 392 F.2d 801,810 (1967) cert. den. sub nom. Preston

Products Co. v. N.L.R.B., 392 U.S. 906. In that case (which involved a set of facts essentially similar to those here involved), the union requested retroactive compensatory relief which the Board had denied. The Court found it unnecessary to deal with the failure of the Board to explicate the grounds for said denial because the Board asked the Court to remand the case so it could give further consideration to the issue in conjunction with other cases which had arisen subsequently and which raised the same question, Ex-Cell-O Corp., No. 25-CA-2377 (NLRB Nov. 18, 1965); Herman Wilson Lumber Co., No. 26-CA-2536 (NLRB Sept. 6, 1966); and Zinke Foods, Inc., Nos. 30-CA-372, 30-RC-400 (NLRB April 1, 1966).

Whether or not the Board will make a similar request in this case, we urge the Court to grant a similar remand here. However, such remand should not prevent immediate enforcement of the Board's order while it reconsiders its denial of the remedy requested by the Union in this case. Immediate enforcement coupled by a remand was granted in the UAW case (see also Packinghouse Workers v. N.L.R.B., ____ U.S. App. D.C. ____, 70 LRRM 2489, 2494 (1969); International Chemical Workers Union v. N.L.R.B., ____ U.S. App. D.C. ____, 395 F.2d 639 (1968) and should be granted here. This procedure would square with the evaluation of remedies as expressed in International Brotherhood of Operative Porters v. N.L.R.B., 116 U.S. App. D.C. 315, 391, 320 F.2d 757, 761 (1963) where this Court said:

"In the evolution of the law of remedies some things are bound to happen for the 'first time'. . . We cannot regard changes in remedial mechanism as beyond the Board's powers so long as they reasonably effectuate the Congressional policies underlying the statutory scheme."



And in Ex-Cell-O, Wilson Lumber and Zinke Foods, supra the Board is engaged in a major reassessment of its remedial policies applicable to refusal-to-bargain violations such as the one in this case. Should new remedies result from said reassessment they should equally apply to this case. Remand with respect to the expanded remedy requested by the Union, is the orderly way of dealing with this issue in that such remand will not delay or interfere with present enforcement of the Board's bargaining order.

CONCLUSION

For the reasons stated above, the Board's existing Order should be enforced forthwith, but the case should be remanded to the Board for further consideration of whether the additional relief requested by the Union is both appropriate and necessary to compensate the employees and the Union for losses they incurred and to otherwise restore the status quo prior to the Company's violations of the Act.

Respectfully submitted,



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480

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 23,321.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

VS.

THIDEE PRODUCTS, INC.,

Respondent.

**ON PETITION TO REVIEW AN APPLICATION TO ENFORCE
AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.**

BRIEF FOR RESPONDENT THIDEE PRODUCTS, INC.

United States Court of Appeals
for the District of Columbia Circuit

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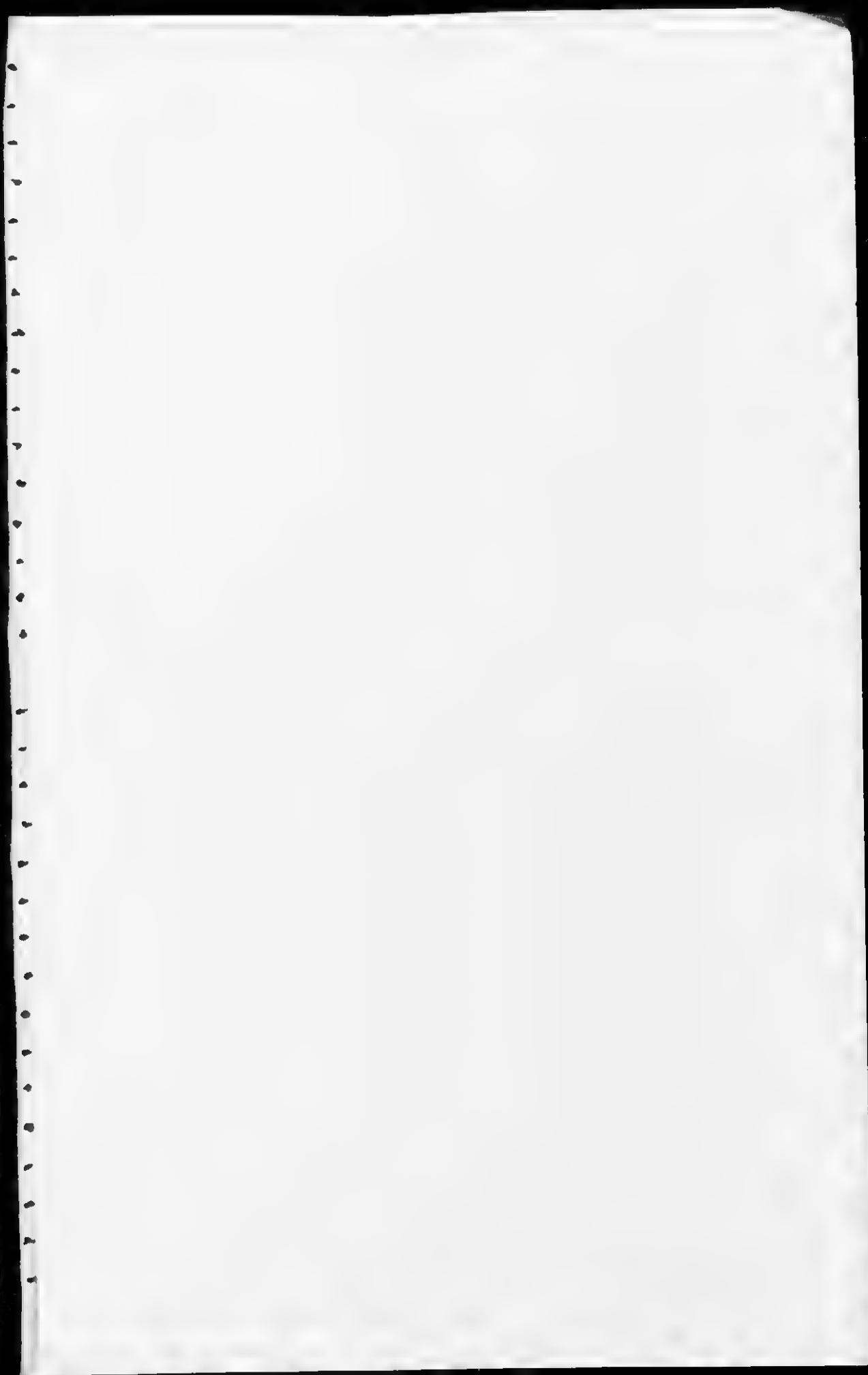


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IV. Whether substantial evidence on the whole record supports the Board's finding that the company violated Section 8(a)(3), (4) and (1) of the Act by issuing warning notices to employees Bill Wells and Claudine Tackett, thereby changing their working conditions in retaliation for their union adherence and adverse testimony at a prior Board unfair labor practice hearing. Respondent contends that this question should be answered "No" ----- 25

V. Whether substantial evidence on the whole record supports the Board's finding that the company violated Section 8(a)(5) and (1) of the Act by adopting and posting a new set of work rules, and by instituting a probationary period of employment for new employees, without consulting or bargaining with the union certified as the exclusive representative of its employees. Respondent contends that this question should be answered "No" ----- 25

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2. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging employees David Leffler and Pauline Messer. Respondent contends that this question should be answered "No."

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5. Whether substantial evidence on the whole record supports the Board's finding that the Company violated Section 8(a)(5) and (1) of the Act by adopting and posting a new set of work rules, and by instituting a probationary period of employment for new employees, without consulting or bargaining with the Union certified as the exclusive representative of its employees. Respondent contends that this question should be answered "No."

6. Whether the Board's Order is valid and proper. Respondent contends that this question should be answered "No."

COUNTER-STATEMENT OF FACTS.

The facts adduced at the hearing in this matter are in sharp conflict with the Trial Examiner's findings, conclusions and recommendations. The Trial Examiner and the Board have based their findings and conclusions on an "inference" only, and have twisted and contorted the facts and set up only those facts in the decisions and the Brief that they wanted the Court to know about. We shall show in our Argument that they either left out the facts presented in favor of the Respondent or that the facts are presented out of context with all of the evidence.

ARGUMENT.

I. Whether substantial evidence on the whole record supports the Board's finding that the company violated Section 8(a)(1) of the Act by promulgating and maintaining rules which threatened employees with discipline and discharge if they engaged in solicitation or distribution of literature of any kind on company property; by interrogating an employee as to what he had discussed with counsel for the General Counsel and counsel for the union at a prior unfair labor practice hearing; and, by warning an employee against associating with other employees who supported the union. Respondent contends that this question should be answered "NO."

Respondent excepts to the Trial Examiner's conclusion that the posted rules of the company are invalid and in violation of Section 8(a)(1) of the Act. There is no evidence that anyone was penalized for violation of these rules unless the violation occurred on company time. There is no evidence that any employee was penalized for distribution of literature. The rules are reasonable and

applied impartially. Violations are defined and the word "UNION" is not mentioned. These same rules are posted in thousands of manufacturing plants throughout the country.

Case No. 9-CA-4618 deals exclusively with the posting of company rules and their so-called effect on working conditions. The evidence shows that the rules in question were formulated by Hollander 25 years ago and have been posted from time to time. His right to do this is not questionable since none of these rules have ever been considered unreasonable. The complaint simply alleges that all the rules are unlawful. The respondent has a legal right to formulate and post reasonable rules at any time for the purpose of maintaining efficiency through the orderly operation of the plant. (*Mason & Hughes, Inc.*, 86 NLRB No. 128 (1949) 25 LRRM 1019.) In fact, the respondent had the right to post these rules IF he had been in the process of negotiating, which he was not.

The Trial Examiner in his opinion makes this statement, as follows: "The nondistribution rule is presumptively violative of Section 8(a)(1), unless rebutted by evidence of special circumstances demonstrating its need based upon safety factors, interference with plant production or plant discipline. No such showing was established herein." The Trial Examiner was completely wrong on this statement. For months prior to the present hearing there was complete evidence of special circumstances based upon safety factors, interference with plant production and plant discipline before these rules were re-posted. In the first case before this Court in Case No. 22,911, these special circumstances immediately prior to the posting of the rules when this Court reviewed the discharge of Wanda Reagan in the prior case.

The discharge resulted from a list of employees,

written by Ronald Janetzke, General Counsel for the union, and distributed to the employees of the respondent listing union members. Patty Lewis was on the list and she protested the inclusion of her name which resulted in a general upheaval among the female employees. The testimony of Mary Burgher (R. page 552), Hazel Ward (R. page 560), and Patty Lewis (R. page 568), established the fact that Wanda Reagan accused Patty of being a member after an argument which resulted in several women rushing to Hollander's office in tears. This later caused friction out on the job which certainly interfered with the efficiency of the plant. Ronald Janetzke admitted writing the list in his testimony and said he was sorry that he made the mistake. However, Reagan was discharged, under the rules, for creating a commotion during working hours.

The Trial Examiner said no showing of interference with plant production was established. When we examine the testimony of all of the witnesses, we must conclude that there is nothing further from the truth. In fact, the list compiled by Janetzke, completely divided the female employees thereby creating animosity which resulted in many of the incidents complained of. One faction hated Hollander and the other faction hated Janetzke. The reason for this bias is very much in evidence throughout the record in all of these cases. For example, in the presence of Marjorie Pratt and Connie McGoan, Phyllis Wilson, when asked why she had not been back to work, told Hollander: "Well, Mr. Janetzke called me and told me that I was fired" (R. pages 310-327) to which Hollander replied: "Well, he knows more than I do then." Janetzke's interference here caused Wilson to leave her job thinking that Hollander had discharged her. Confronted, she said: "Well, it didn't make any difference anyway, I quit Monday."

The Trial Examiner makes much of a stipulation that in January, following the prior Board hearing, respondent posted a set of work rules and regulations. In fact, it was also stipulated that the same rules were posted in 1945 and had been posted, from time to time, until the fire destroyed the bulletin Board. The January posting was the first after the fire. The Trial Examiner's contention that these rules established new working conditions is completely wrong. When one considers the turmoil caused by the female employees of the company under the influence of Union attorney, Janetzke, who apparently took it upon himself to fire Wilson. Under the circumstances, the rules were necessary to maintain discipline and efficiency.

The warning notice issued to Wells had nothing to do with his failure to watch another employee. Wells had no education. He could hardly write his own name. He was the oldest employee but was not capable of performing work outside the laboring classification. However, it was quite apparent that somebody had made Wells believe that Hollander was holding him back. For some reason, Wells got the idea that he was being discriminated against because his pay was lower than many others. Wells' efficiency suffered due to this and Hollander, in an effort to straighten the old man out, gave him an opportunity to try to do work in a higher classification. After much defective work, he was finally given a warning notice with no penalty. Wells testified (R. pages 222-253):

The alleged threats and interrogation of Wells are based upon the fact that Wells left the prior hearing and went back to the plant the following day and was told that there was no work until after the hearing because all of the supervisors were attending the hearing. Wells returned to the hearing and was put on the witness stand by

Janetzke in support of a new complaint that the respondent had discharged Wells because he had testified against the respondent. Wells so testified under direct examination. However, under cross examination, Wells finally admitted that he was not fired but was told that he could go back to work after the hearing was over. Hollander, or anyone else, had the right to know why he did not tell the truth on the witness stand.

II. Whether substantial evidence on the whole record supports the Board's finding that the company violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging employees David Leffler and Pauline Messer. Respondent contends that this question should be answered "NO."

The Trial Examiner's own opinion disposes of any alleged "discriminatorily discharging" of Pauline Messer. The Trial Examiner's opinion reads as follows:

"The uncontradicted evidence shows that on March 27, Hollander hired Pauline Messer as a 90-day probationary employee and, at that time, told her '* * * we have quite a few troublemakers here, and we do not like troublemakers,' and that she should learn to whom she should talk and to whom not to talk. Messer admittedly did not comprehend the significance of these remarks at the time. It also appears that similar remarks were addressed to Messer by Supervisor Mary Burgher and Hazel Ward. However, Messer testified that neither Ward nor Burgher ever mentioned the Union to her in these conversations. Nor is there any evidence that Hollander referred to the Union in his comments to her when hired or at any other time.

"The General Counsel contends that through knowledge subsequently acquired by Messer while working on the job, she learned that the term 'trouble-

maker' was synonymous with the term 'union adherent,' and that, therefore, Hollander's comment to her when hired was coercive in violation of Section 8(a)(1) of the Act.

"Section 8(a)(1) of the Act provides that it shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Section 7. It is well settled that the test of interference, restraint, and coercion is whether the conduct involved may reasonably be said to tend in those directions. *Kroger and Company v. NLRB*, 401 F.2d 682, 686 (C.A. 6). I find that the record fails to establish by the preponderance of the evidence that Messer, during the course of her employment, eventually comprehended the significance of Hollander's remark to mean that she was not to associate with union adherents. I, accordingly, concluded that Hollander's alleged admonition to Messer did not tend, insofar as she was concerned, to interfere with her statutory rights in violation of Section 8(a)(1)."

The alleged coercion of Pauline Messer and David Leffler is handled by the Trial Examiner, in a very unique and varied manner. He concludes that Hollander's alleged admonition to Messer did not tend, insofar as she was concerned, to interfere with her statutory rights in violation of Section 8(a)(1) of the Act. However, he takes the opposite view concerning David Leffler. Leffler, he says, had a different belief than Messer and since he believed differently, Hollander's same admonitions to him were in violation of Section 8(a)(1) of the Act. Hollander never mentioned the union to either Messer or Leffler. Hollander was trying to warn these new employees that two factions were at work in the plant.

"On April 12, Hollander, in a conversation with David Leffler who began working for Respondent

about the middle of March, inquired whether he was becoming intimate with some of the employees, mentioning specifically the names of Messer and Phyllis Wilson. Leffler replied that he had not but stated that he had a date with Messer for that evening. Hollander then told him to be careful with whom he associated or talked to because he could get into big trouble. The next morning, Saturday, a non-workday, Leffler was summoned to the plant by Hollander who questioned him about his date of the preceding evening and then asked whether he realized what was meant by his remark of the preceding evening in connection with associating with the wrong people. When Leffler replied that he thought he meant 'union sympathizers,' Hollander denied it and stated he was referring to improper social relations between the women and men employees, which could subject the men to blackmail. A few of the women employees, including Messer, were either separated from their husbands or divorced. Leffler was also either separated from his wife or divorced."

In the case of David Leffler, in addition thereto Hollander was afraid of further trouble because, as the Trial Examiner found as follows: "A few of the women employees, including Messer, were either separated from their husbands or divorced. Leffler was also either separated from his wife or divorced." So clearly there is not any substantial evidence presented by General Counsel "discharging David Leffler and Pauline Messer."

David Leffler was a probationary employee. The record shows no indication that he was a member of or participated in union activities. In fact, he was employed less than a month. (R. page 113, line 18.) The record shows that Leffler did his work efficiently until he began fraternizing with Pauline Messer during working hours. Hazel Ward (R. page 373, line 12):

"Q. Now, you reported that Pauline Messer was taking time off to pass this coffee, that was affecting her production, right, you reported this to Mr. Hollander?"

Trial Examiner: She has testified to that.

Q. Did you also report the man she was giving the coffee to?

Q. All right. Now, you've testified there were men who came to her machine during the day and talked to her, also. Who was that?

A. The boy back there—David, I believe is his name, and Kenny Kelismit, or something, that works over at the factory, and one other guy, I don't know his name."

Joseph Hollander testified that Mr. Leffler, a new employee, could not do the work he was hired to do and that he caused considerable damage to the products produced and the machinery, and that that was the reason for his discharge. (R. 384-390.) Joseph Hollander further testified as follows:

"So I told him all the reasons why I didn't think that he was working out. I told him when I come back there, when he was sanding the jacks—well, it's a vertical sanding belt. He'd take one of these jack bodies, it's about a foot long, and he would just be resting there looking all over the place while he was doing it. Well, he just didn't seem to have his mind on what he was doing.

I told him this. And he told me, he said, 'Well, maybe you're right.' He said, 'I've got a lot of things on my mind right now.' And he went into talking about all what his problems were.

Q. What were his problems?

A. Well, he said his wife had just left him, or he had left his wife; his child was up for adoption. That was one thing. Then he talked about how bad he needed the job, and that he needed the money be-

cause there was a suit filed against him in a traffic accident he was involved in. So there was about \$300,000.00, something like this.

He talked about his troubles with the police. He said he had been arrested for stealing a car; he said he had been arrested for passing bad checks; he talked about everything under the sun why he couldn't keep his mind on what he was doing.

Then he started talking about his hands. Well, I told him—I saw him like he was in a daze like, he'd just stand there looking all over the place. He said—well, that's when he brought up about his hands. Well, when he grabbed parts tight to push them against the sanding belt he said sometimes his hand would like fall asleep. And I asked him if that had ever happened before, and he said it had happened over at Chrysler Airtemp when he had worked over there. He was running a spot welder, and he had gotten his hands—he had gripped the part and he couldn't move his hands, and the welding electrode came down on his hands and he was injured over at Chrysler that way.

So he talked about—he said maybe he couldn't do these jobs, we hadn't tried him out that much. He asked me if I would put him on a punch press, possibly. He had run that before, and possibly he could work out on that.

Well, I told him if he was having that kind of trouble it would be crazy to put him on a punch press where he would be in more trouble with his hands.

Q. Well, he was a new employee anyway, wasn't he?

A. He had been there about two or three weeks.

Q. Then who discharged him, your father or you?

A. My father did."

Joseph Hollander further testified (R. page 393, line 14):

"Q. So, your father had made up his mind to discharge Leffler when he called him in Saturday morning. Right?

A. Yes, that was the first thing he told him, that we couldn't use him any more. (R. 389-391.)"

As against Joseph Hollander's extended testimony above, Leffler just testified as follows:

"Q. Okay. Did anybody say anything about your work? Did Mr. Hollander ever say anything to you about your work at all?

A. No." (R. page 107.)

Leffler further testified (R. page 108, line 22):

"A. He also said he liked my work, and he expected me to be there a long time."

It is obvious that Leffler is not a credible witness.

The Trial Examiner further concludes that: "Considering all the evidence in the context of respondent's anti-union propensity as found in the prior cases, I conclude that Leffler's discharge was, at least, motivated by respondent's desire to discourage unionism in the plant in violation of Section 8(a)(3) and (1) of the Act."

This brings to mind a statement made by the Trial Examiner at the close of the hearing. (R. page 429, line 13.) "Counsel have already been advised because of the prior pending case there may be considerable delay in the issuance of my decision for reasons which are self evident."

The respondent charges the truth to be that said Trial Examiner has based his findings, conclusions and recommendations on the Board decision in the prior case. *Leffler and Messer were not employed by respondent at that time.* Respondent contends that motivation, in part, as set forth by the Trial Examiner, is not sufficient to warrant a viola-

tion of Section 8(a)(1) or (3). (*NLRB vs. Entwistle Mfg. Co.*, CCA4, 120 F. (2nd) 532.) Where motivating cause of employer's action in discharging employee was at issue, the chief guide is the testimony of the employer under oath, and if his explanation is a reasonable one, the onus is on the Board to establish the falsity of his explanation and the truth of its own interpretation. Circumstances that merely raise a suspicion that an employer may be activated by unlawful motives in discharging an employee are not sufficiently substantial to support a finding of discriminatory discharge. (*NLRB v. Citizens News Co.*, CCA9, 134 F. (2nd) 970.) Also (*NLRB vs. Sheboygan Chair Co.*, CCA7, 125 F. (2nd) 436.) The burden of proof is upon the Board. (*United Packinghouse Workers of America v. NLRB*, 210 F. (2nd) 352.)

III. Whether substantial evidence on the whole record supports the Board's finding that the company violated Section 8(a)(3), (4) and (1) of the Act by discriminatorily discharging or forcing the termination of employees John Haywood, Claudine Tackett and Phyllis Wilson. Respondent contends that this question should be answered "NO."

John Haywood, an ex-convict, under the supervision of Parole Officer John Weiher, began working for Respondent on March 15, 1967. The Trial Examiner said in his opinion as follows: "On November 20, Weiher (Parole Officer) visited Haywood at his home and informed him that he had received a telephone call from Hollander to the effect that he had become too involved in union problems."

The above statement was never made by Weiher (R. page 138, line 20):

“Q. During the conversation that you had with Mr. Hollander over the phone did Mr. Hollander ever in any of these conversations ever even mention union activities to you?

A. Not exactly, as I recall—Which phone call are you talking about?

Q. Either that you—any time that you talked to him, did he ever at any time in any of the conversations say anything about the union?

A. I don't think so.”

Mr. Weiher did testify that he received a call from Hollander complaining about Haywood's conduct around the plant concerning foul and abusive language about female employees. (R. page 133.)

Apparently the Trial Examiner is crediting the testimony of Haywood and discrediting the testimony of both Weiher and Hollander.

The trial examiner further says in his opinion with reference to John Haywood as follows:

“Adam Campbell, an employee, testified that at the end of November, 1967, he had a long conversation with Haywood about the latter's immoral exploits with women, and that on January 8, he had another conversation lasting 3 to 4 hours during which Haywood neglected to remove certain castings from his machine, causing them to get scratched, Campbell also testified that he complained to Hollander that Haywood's long conversations with him interfered with his work.”

Adam Campbell in part testified as follows:

“Q. Will you state your name and address for the record, please?

A. Adam Campbell, 509 Tiffin place, Dayton, Ohio.

Q. And where do you work at?

A. Tiidee Products.

Q. And how long have you worked there?

A. A little over ten months.

Q. Now, in the course of your duties have you had occasion to come in contact with John Haywood?

A. Yes, sir.

Q. Did you ever have any conversations with him?

A. Yes. We had a pretty long one one day.

Q. What?

A. We had a pretty long conversation one day.

Q. Could you tell us what was said?

Trial Examiner: Will you tell us when this occurred?

Mr. Rector: Yes.

The Witness: Oh, I had been there approximately three weeks, something like that, around December—no, I had been there a little—It was around the last of November.

By Mr. Rector:

Q. Of which year?

A. Of '66—no—the last of November, or the first of December, somewhere.

Trial Examiner: '66 or '67?

The Witness: '67. Pardon me.

By Mr. Rector:

Q. Well, now, then, go ahead and tell us what was said.

A. Well, they put me on the punch press trimming these houses which John Haywood was running in the tumbling barrel. He loaded it up that morning—well, he come in at 8:00 o'clock that morning, and he loaded it up, and while they were running he came over and had a conversation with me.

So he started talking about the women he went out with. Well, he went out with—

Mr. Janetzke: Objection. I can't see the relevancy of this at all.

Trial Examiner: What is the prospective relevancy of this?

Mr. Rector: The prospective relevancy is that was Mr. Hollander's complaint to the parole officer, his conduct, and what he had been talking about, the women, and it had got around the plant, and it really got unbearable.

Trial Examiner: Overruled. I'll allow it in for what it's worth.

By Mr. Rector:

Q. Go ahead, what did he say?

A. Okay. He was going out with three women—Claudine Tackett, Carol and Sue Cantro. He would go to one's house and eat supper, he would go to another one's house and eat dinner, he would go to the other one's house and go to bed with them. All right, he wouldn't go to the same person's house to go to bed every time, he would change it around. He would eat at one's house, a different one's house, and go to the other one's house at different times.

So he keeps talking about the women. Every morning he would come in and say, oh, boy—he's got a big head. He's been out drinking until 2:00 or 3:00 o'clock in the morning before he got in, see.

About that time he asked me what did I think about the union. So I said, 'Well, they've got their good points and they've got their bad points.' About that time Mr. Hollander walked down the second aisle where I was at, and he said, 'You'd better not let Mr. Hollander hear you say that or he'll fire you.' So he went back to work.

Q. Do you recall January the 8th, 1968 when he spent a lot of time talking to you?

Mr. Frockt: Objection.

Trial Examiner: Overruled.

A. Well, the times he would talk would be approximately like—he would tell me about his women, like I said, his drinking, and one particular day there,

I don't remember the exact date, but anyway it was about three to four and a half hours he stood there talking about the same thing over and over and over.

Q. Well, had he been on a week's vacation, or off a week before that?

A. Yes, he had been off.

Q. About how many hours did he spend talking to you that day?

A. Approximately three to four and a half hours.

Q. And—He should have been working?

A. He wasn't doing nothing, for you had to be right up against one another on account of all the noise.

Q. Well, were you working?

A. I was standing by my punch press and he was standing right by the side of me." (R. pages 335-339.)

Mary Burgher also testified as follows:

"Q. Mary, do you know John Haywood?

A. Yes, I do.

Q. Did you ever have any conversation with him during working hours in the shop?

A. Yes, I did.

Q. Could you tell us about it?

A. Well, it was a year ago August, I'm pretty sure, but the date I don't know, and I were back on the bending machine bending tubes, and of course I didn't know John very well because I had just come back in to work from being sick, and he says to me, he said, 'Did you know that I had been in prison?' And I said 'no.' And just like that. And he said to me 'You know,' he said, 'I haven't kissed a woman,' he said 'for 23 years.' And he said, 'I haven't been with a woman for 23 years either.'

I just took off, I got kind of scared." (R. 348-349.)

In view of the above, we must conclude that John Haywood was unfit to work with female employees. We must further conclude that the Trial Examiner has chosen

to credit the testimony of a convicted murderer, with immoral tendencies, against that of Weiher, the parole officer, Mary Burgher, Adam Campbell and Hollander, the president of the company. Haywood's activities and immoral expounding can hardly be considered normal nor can they be considered union activity. Haywood was not discharged, constructively or otherwise. His resignation was strictly a matter between Weiher, his parole officer, and himself.

The Constructive Discharge of Claudine Tackett: The Respondent takes the position that the labor law does not require any employer to retain any employees who deliberately defies the supervision of the work forces. That Tackett was a union representative, was very much in evidence. She made the fact known to everyone, including Hollander. She apparently assumed that the union would protect her no matter what she did or said to the management. In fact, Tackett became so belligerent that she refused to work on certain jobs and deliberately miscounted shipments and fouled up assemblies. She deliberately told others she would get fired if they talked to her.

Mary L. Mayer testified (R. page 272), that she sat down by Tackett one day at lunch and Tackett told her not to sit with her because she (Tackett) would get fired.

It is quite clear that Tackett wanted to be fired.

Elanor Kleismit testified (R. p. 282, line 16):

"Q. Did you ever have a conversation with Mr. Hollander concerning complaints that he'd had on the hoses, water lines?

A. Yes.

Q. What did Mr. Hollander tell you?

A. He's been getting complaints from the customers, and I should inspect them.

Q. And did you start inspecting them?

A. Yes, sir.

Q. And what did you find when you started inspecting them?

A. Well, several boxes were short all the time.

Q. Yeah.

A. And then Claudine would walk away and say, 'Somebody is taking it out of there' when you'd say it to her.

Q. In other words, were those her boxes that you found the short in?

A. She brought them over when they were open, and I checked them.

Q. Yeah. Were any of them—Did any of them ever have too many in, too many tubes in?

A. Yes.

Q. Were any of them under number?

A. Yes, sir.

Q. Did you tell Claudine Tackett about that?

A. Well, I told Mr. Hollander first.

Q. Yeah.

A. Then I would mention it, that it was short.

Q. Yeah.

A. And then she'd walk away and say, 'Well, somebody is taking it out of my boxes.' "

Jewell Romaine testified (R. page 274, line 19):

"A. I wind the water hose.

Q. Water hose?

A. Yes, sir.

Q. Now, Jewell, there has been some testimony here about how many boxes of those normally should be run in a day on that machine. Could you tell us approximately what your production is each day?

A. Well, sometimes I get 40 to 45 a day.

Q. 40 to 45?

A. Boxes."

The Trial Examiner's conclusion that Hollander resumed harassment of Tackett by warning her about her

future conduct hardly is an expression of the truth. He says Hollander raised her production quota, taking her off the drill machine, assigning her to the elbow machine despite her protestations, and laying her off because there was no other work available. He further says that Tackett was held responsible for alleged carelessness and defective work in circumstances where there was reasonable doubt as to her blame. He intimates that Hollander was being unreasonable with Tackett when he directed her to increase her production to 27 boxes per day. He says Tackett had been producing only 12 to 13 boxes per day. However, read the testimony of Jewell Romaine, a new girl, who testified that a normal day's work on that machine was 40 to 45 boxes per day. Hollander had good reason to reprimand Tackett.

The Trial Examiner insists that Tackett was laid off the day she refused to run the elbow machine. This is not so. She left the plant before Hollander could fire her. He gave her the discharge notice later when she came after her check. Hollander testified (R. page 401, line 19):

"Q. Now, there's been some testimony about Claudine Tackett refusing to run the elbow machine. Would you help us out on that?

A. Well, she was off, I think it was two days the week previous. She only worked on that machine for two days. I think it was either Tuesday or Wednesday and she was off Thursday and Friday. She reported back then the following Monday. And normally I'm out on the floor and most of the employees walk up to me and want to know what jobs they're going to run. And it was her turn next. And she asked me what she was going to run, and I told her to run the elbow machine.

And she says, 'I won't run it.'

I said, 'Why not?'

She says, 'Well, if I'm back there and I get sick you won't relieve me' or words to that effect.

So I asked her, I said, 'Are you sick?'

She said, 'No.'

I said, 'Are you planning on getting sick?'

She says, 'I might.'

I said, 'Well, I wouldn't worry about that, you're not sick now.'

So she had a very hostile attitude, so I said, 'Well, that's all I have. Come on over to the eating department here and we'll talk about it.'

Well, actually she started to walk away, and she rang her card out about 8:08, 8:09.

Q. Before she rang her card out, in the restroom area did you talk to her?

A. I don't know whether it was before she rang her card out or after. But I tried to talk to her, and I saw she didn't care about doing anything. And I said, 'Well, that's all I have.'

Q. And then?

A. Then she left.

Q. She left then.

A. Yes.

Q. Then when was the next time you saw Mrs. Tackett?

A. About a week and a half later.

Q. Tell us what happened then.

A. I was called to the office by Miss Pratt. I was out in the shop. She said, 'There's someone out here giving me a rough time.' And she told me part of what happened about him barging into the office and he wouldn't get out.

I said, 'All right, I'll be right out.'

Well, she told me that Claudine was there. So I surmised this man, whoever it was, but I didn't know at the time he was with her. So on the way out I had some of the girls come with me, I think Patty and—no, a fellow there by the name of Jack, he happened

to be standing there, and I asked him to come out, and Marge, I don't remember who else was there. So I walked in, and I said, 'What can I do for you?'

He said, 'I want Claudine's check.'

I said, 'Who are you?'

He said, 'I'm her father.'

I said, 'I can't give you her check.' I said, 'I want to talk with Claudine.' I said, 'Will you please step outside?'

He started to using foul language, threatened me. I saw I wasn't going to get anywhere, so I walked away from him. I wasn't going to argue with him. And I came back and he was still there.

I said, 'Now, you get out of here or I'll call the police.'

And he got very hostile. I said, 'Now, you go on outside. I want to ask Claudine a question,' I said, 'and then she can have her check and go.'

Well, he refused to close the front door. So I refused to talk to Claudine while he had the front door open. Well, he finally agreed, making quite a bit of rumpus outside, and invited me outside to a fight.

And I asked Claudine one question. I said, 'Where have you been?'

And she said, 'Well, you told me you would call me,' and that was a lie.

So, I said, 'Claudine, you are a liar. Now, you wait here just one minute.' I went to my office, and I pulled out the discharge ticket I had already made out because she refused to run the job, and I got her check at the same time. I come over and I handed her the discharge. I said, 'Now, this makes it official. You are discharged.' And I gave her her check, and she went out."

The testimony of Hollander is corroborated by Barbara Tipton (R. page 299), Connie McGoon (R. page 328), Mary Burgher (R. page 351) and Marjorie Pratt (R. page 320). Tackett was hostile toward Hollander at both hear-

ings. Membership in a labor organization does not guarantee one the right to what Tackett did. Refusal to obey orders of management is cause for discharge. (*Zenith Optical Co.*, 48 NLRB No. 160 (1943), 12 LRRM 94.) Where a legal ground for discharge exists, the fact that the employee was an active unionist will not protect him from discharge for cause. (*NLRB vs. Huber and Huber Motor Express*, CA-5 (1955), 36 LRRM 2241.) Both Tackett and her father demonstrated that they were troublemakers. (*Harlingen Citrus Cooperative*, 57 NLRB No. 217 (1944), 14 LRRM 276.)

Constructive Discharge of Phyllis Wilson: For some unknown reason both Wilson and Tackett refused to operate the elbow machine. All female employees are required to operate that machine at intervals. The Trial Examiner intimates that the machine is hazardous in some way. This is completely ridiculous. Barbara Tipton operates the machine for weeks at a time and says it is not difficult. (R. page 301.) Connie McGoon testified that she operated the elbow machine day in and day out for months at a time and found it not hard to do. (R. page 324.) Mary Burgher testified that she had run the elbow machine for years, five days a week, and there was nothing difficult about it. (R. page 349.)

Phyllis Wilson was biased against Hollander at both hearings. She referred to him as a juvenile. She was consistently belligerent. She did not show up for work on Wednesday and on Friday Hollander received a telephone call from Wilson's husband asking for her check. Hollander said, "Come on out and get it." Hollander testified (R. page 400, line 8):

"Q. Now, Mr. Hollander, there's been some testimony about whether or not you discharged or

whether or not Phyllis Wilson quit. Now, could you tell us what happened?

A. I was called into the office—I'll start again. I had a message on my desk from Mr. Wilson, I didn't know who it was, the message was taken during the day. When I came into the office I went to my office and called him, and he identified himself as Phyllis Wilson's husband. He said, 'I would like to come out and get Phyllis' check.'

I says, 'Fine. Come on out.' There might have been a few other words said, I don't know.

So he came out Friday, and Marge called me in the office when he came in, and he was standing out in the middle of the floor, and I asked him in, I said, 'Where's Phyllis?'

He says, 'She's out in the car.'

I said, 'Why don't you bring her in?'

He said, 'She said you fired her.'

I said, 'Now, wait a minute, let's get something straight here. You get Phyllis in here and let me hear that from her.'

So he did. He went out and got her. And at that time we were already into my office, the front office, and I asked her one question and that was, 'Did I say anything to you when you were here Tuesday?'

She said, 'No.'

I said, 'If I didn't say anything to you how could I have fired you?'

Then she became very talkative. Her talk was quite comical. And she said, 'Well, Mr. Janetzke called me and told me that I was fired.'

I said, 'Well, he knows more about it than I do then.'

And she said something to the effect, 'Well, it didn't make any difference anyway, I quit Monday.' "

Hollander's testimony is corroborated by Marjorie Pratt (R. page 310) and Connie McGoon (R. page 327).

All of this testimony is uncontradicted.

IV. Whether substantial evidence on the whole record supports the Board's finding that the company violated Section 8(a)(3), (4) and (1) of the Act by issuing warning notices to employees Bill Wells and Claudine Tackett, thereby changing their working conditions in retaliation for their union adherence and adverse testimony at a prior Board unfair labor practice hearing. Respondent contends that this question should be answered "NO."

There is no evidence in the record showing that the working conditions of Bill Wells and Tackett were changed and certainly no evidence that any changes were made in retaliation for their union adherence or adverse testimony at a prior hearing.

V. Whether substantial evidence on the whole record supports the Board's finding that the company violated Section 8(a)(5) and (1) of the Act by adopting and posting a new set of work rules, and by instituting a probationary period of employment for new employees, without consulting or bargaining with the union certified as the exclusive representative of its employees. Respondent contends that this question should be answered "NO."

Respondent's argument on the rules is set forth in its answer to Issue No. 1.

CREDIBILITY.

In view of the fact that the entire complaint is based upon constructive discharge, whatever that is, respondent must conclude, after careful study of the record, that General Counsel's witnesses are not telling the truth. The testimony of Wilson and Tackett cannot reasonably be believed. First they quit and then they were fired. This takes us back to the prior hearing when Janetzke ad-

mitted, under oath, that he had mistakenly submitted a list of employees who were supposed to be union members but were not. This list created a division of employees to such an extent that open rebellion broke out which caused most of the trouble including the discharge of Wanda Reagan. We must, therefore, conclude that Ronald Janetzke, Counsel for the Union, has been the chief troublemaker and that it is only natural that some of this has rubbed off on some of the members. (*Harlingen Citrus Cooperative*, 57 NLRB No. 217 (1944), 14 LRRM 276, and *Zenith Optical Co.*, 48 NLRB No. 160 (1943), 12 LRRM 94.) A very good example of credibility concerning Tackett appears in the record on page 32. She infers that it would be impossible to get out 27 boxes a day. Jewell Romaine testified (R. page 275) that she got 40 to 45 boxes per day and she did all of the packing, inspection, etc. The testimony of Elanore Kleismit (R. page 201) is another example of the credibility of Tackett.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the Board's findings are not supported by substantial evidence on the record: that the Board's order is invalid and that a decree should not issue enforcing the Board's order and that the application of the Board should be dismissed.

Respectfully submitted,

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